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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

HILDA L. SOLIS, Secretary of)
Labor, United States Department)
of Labor,)
)
Plaintiff,)
) Case No.:
-vs-) 2:12-cv-01406-RSM
)
LANTERN LIGHT CORPORATION,)
d/b/a ADVANCED INFORMATION)
SYSTEMS, a corporation;)
DIRECTV, LLC, a limited)
liability company; and RAMON)
MARTINEZ, an individual,)
)
Defendants.)
)
)
_____)

DEPOSITION UPON ORAL EXAMINATION
OF
RAMON MARTINEZ

Tuesday, June 10, 2014
9:00 a.m.
300 Fifth Avenue
Seattle, Washington

Reported by:
Cheryl Macdonald, CRR, RMR
JOB No. 140610CMA

A P P E A R A N C E S

FOR THE PLAINTIFF:

NIAMH E. DOHERTY
Trial Attorney
U.S. DEPARTMENT OF LABOR
Office of the Solicitor
350 South Figueroa Street
Suite 370
Los Angeles, California 90071
doherty.niamh@dol.gov

and

JOSEPH M. LAKE
Trial Attorney
U.S. DEPARTMENT OF LABOR
Office of the Solicitor
90 7th Street
Suite 3-700
San Francisco, California 94103
lake.joseph@dol.gov

FOR DIRECTV:

JOEL P. KELLY
Attorney at Law
JACKSON LEWIS
725 South Figueroa Street
Suite 2500
Los Angeles, California 90017
Kelly@jacksonlewis.com

FOR LANTERN LIGHT CORPORATION:

JENNIFER L. TRUONG
Attorney at Law
AMS LAW
1711 South Jackson Street
Seattle, Washington 98144
jliutruong@amslaw.net

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16
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20
21
22
23
24
25

I N D E X

EXAMINATION	PAGE
BY MR. LAKE:	5
EXHIBITS MARKED	PAGE
No. 1 Amended Notice of Deposition.....	9
No. 2 Lantern Light registration data search.....	12
No. 3 Lumin registration data search.....	30
No. 4 Plaintiff's Interrogatories and Fourth Amended Answers..	35
No. 5 DirectTV Services Provider Agreement with Lumin.....	45
No. 6 DirectTV instructions for residential installations...	51
No. 7 DirectTV to contracting partner 3/5/12.....	68
No. 8 Plaintiffs requests for admission and responses.....	74
No. 9 All Nations/AIS Pay Scale...	95
No. 10 Lumin billing sheets.....	108
No. 11 All Nations Pay Sheet.....	123
No. 12 Lumin Payroll Summary 12/12/10.....	124
No. 13 AIS Time Tracking Guidelines.....	127

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X (Cont'd.)

EXHIBITS		PAGE
No. 14	AIS Employee Handbook.....	129
No. 15	AIS billing sheet 2/3/12 - 2/9/12.....	133
No. 16	Rate card.....	144
No. 17	Attic Safety information sheet.....	160
No. 18	Lantern Light/Martinez initial disclosures.....	170
No. 19	Plaintiff's Requests for Admission and Amended Responses.....	181

1 RAMON MARTINEZ, witness herein, having been first
2 duly sworn by the Certified Court
3 Reporter, deposed and said as
4 follows:

4 EXAMINATION

5 BY MR. LAKE:

6 Q. Good morning, Mr. Martinez.

7 A. Morning.

8 Q. Can you please state your full name for the
9 record?

10 A. Ramon Martinez.

11 Q. And my name is Joe Lake. I'm with the
12 Department of Labor. I'm going to be taking your
13 deposition today. Have you been deposed before?

14 A. No.

15 Q. So the way the deposition works is I'm
16 going to be asking you questions. You're going to be
17 answering my questions. The testimony that you're
18 giving today is testimony that's just the same as if
19 you were in court. It's under the penalty of perjury.
20 Do you understand all of that?

21 A. Yes.

22 Q. Now, when we're going through the
23 deposition, like I said, I'll be asking questions,
24 you'll be giving answers. The court reporter is going
25 to be taking down all of our -- all the discussion

1 that we're having. So we need to make sure that the
2 record is clear for the court reporter. And so what
3 I'd ask is, when you're answering my questions, you
4 need to give an oral response, not just nodding your
5 head or anything like that, or not just saying
6 "uh-huh" or "huh-uh." Saying "Yes" or "No."

7 A. I understand.

8 Q. Okay. And also, please, I'll ask that you
9 let me finish my questions before you start answering,
10 and conversely, I'll make sure to finish letting you
11 respond to my questions before I start asking another
12 question. That way the transcript will be clear. We
13 won't be talking over each other or anything like
14 that.

15 A. Sure.

16 Q. When I'm asking questions today, if you
17 can't hear any of my questions at any point, please
18 let me know, and I can repeat the question, or if for
19 some reason you don't understand the question in any
20 way -- I'm going to be asking several questions today.
21 I'm sure some of them could have been phrased better,
22 so if you have any questions with understanding,
23 please let me know. I don't want to -- this
24 deposition isn't a test or anything. We want to make
25 sure that you understand the questions that I'm

1 asking. Okay?

2 A. Yes.

3 Q. If you need to take a break at any time,
4 that's generally okay. If I've asked you a question,
5 you'll need to give an answer to the question before
6 we take a break, but otherwise, this isn't a marathon
7 or anything like that. If you need to take a break,
8 just let me know and we can take a break for a couple
9 of minutes.

10 A. Sounds good.

11 Q. It may happen that, during the deposition,
12 you could remember the answer to a question that I
13 asked earlier in the deposition. You know, something
14 could trigger a response to something that I asked
15 earlier. If you do remember information later on in
16 the deposition that relates to an earlier question,
17 you are required to provide that information. Okay?

18 A. Yes.

19 Q. Now, during the deposition there may be
20 questions that call for you to provide an estimate as
21 to the answer. A range or something like that. Now,
22 what you shouldn't do during the deposition is guess.
23 If you have absolutely no idea then that would be a
24 guess, but it is required that you do provide an
25 estimate, if you can. Do you understand the

1 difference between a guess versus an estimate?

2 A. I do.

3 Q. Now, Mr. Martinez, did you do anything to
4 prepare for today's deposition?

5 A. No. Like what?

6 Q. Well, did you have -- did you speak to
7 anybody about today's deposition?

8 A. No. I mean, I met with my attorney early
9 last week. She informed me of the dates and stuff
10 like that, but that was about it.

11 Q. Did you review any documents to prepare for
12 today's deposition?

13 A. No.

14 Q. Did you bring any documents with you today?

15 A. No.

16 Q. And Mr. Martinez, have you taken any
17 medication that might affect your ability to
18 understand my questions today?

19 A. No.

20 Q. Any medication that would affect your
21 ability to answer my questions truthfully or
22 accurately, that might affect your memory?

23 A. No.

24 Q. Is there any reason that you can think of
25 why you wouldn't be able to answer my questions fully

1 and truthfully today?

2 A. No.

3 Q. Mr. Martinez, you're aware of a corporation
4 named Lantern Light Corporation that does business as
5 Advanced Information Systems?

6 A. Yes.

7 Q. Throughout this deposition, I will refer to
8 this corporation as "AIS." Do you understand that?

9 A. Yes.

10 Q. So when I say "AIS" I'm referring to
11 Lantern Light Corporation, which does business as
12 Advanced Information Systems. Okay?

13 A. Yes.

14 Q. Please take a look at a document which will
15 be marked as Exhibit 1 by the court reporter. Mr.
16 Martinez, when I present to you documents throughout
17 the course of today's deposition, please always take
18 your time reviewing the documents as fully as you
19 would like to do before I ask any questions.

20 (Marked for identification Exhibit 1.)

21 A. Okay. I understand.

22 Q. Have you seen this document before?

23 A. This one right here?

24 Q. Yes.

25 A. I don't remember. I might have. We've had

1 a lot of documents, so it seems familiar.

2 Q. Well, Mr. Martinez, this is a notice of
3 deposition to AIS. And under the rules AIS has --
4 actually, first let's look to page 2 and 3. Do you
5 see 11 topics that are listed, a list of 11 topics
6 starting on page 2 going on to page 3?

7 A. Yes. Yes, I do.

8 Q. Now, AIS has designated you as the person
9 most knowledgeable at AIS on all 11 of these topics.

10 MS. TRUONG: Was that a question?

11 MR. LAKE: Not yet. I was letting him look
12 it over first.

13 A. For the most part, yes. You guys are going
14 to be talking to Lisa tomorrow?

15 Q. We do have a notice of deposition out to
16 Ms. Kelly tomorrow as well.

17 A. So she's the controller of the company. So
18 she's going to have -- she should have more acute
19 knowledge of topic No. 2 as far as the record keeping.
20 But for the most part I do have the most knowledge
21 with anything concerning AIS.

22 Q. So besides topic No. 2, the other 10
23 topics, do you believe that you are the person most
24 knowledgeable?

25 A. Yes. I mean, one and two, you know,

1 controller stuff, but I do have a good knowledge of
2 it. She should have more specific knowledge of it,
3 but I do have a working knowledge of it. But for
4 topics 3 through 11, I'm your guy.

5 Q. Thank you.

6 MR. KELLY: Can I request, just so the
7 record is clear, can you identify what category 1 is
8 for the record, mention that as well?

9 MR. LAKE: Category 1 on the notice of
10 deposition of AIS is the payment practices at AIS.

11 Q. And Mr. Martinez, is it your testimony
12 today that Ms. Kelly would be more knowledgeable than
13 you are about the payment practices at AIS?

14 A. When you guys say "payment practices," do
15 you mean how we pay our employees or -- is that what
16 you mean?

17 Q. Generally, yes.

18 A. Yeah. Lisa has the Quick Books. I have a
19 working knowledge of it, but she's generally the
20 bookkeeper and the controller of the company.

21 Q. And then turning to topic 2, the record
22 keeping at AIS. It's your testimony today that Ms.
23 Kelly would be the person most knowledgeable on that
24 topic?

25 A. I have a good working knowledge, but she

1 would have a better working knowledge.

2 Q. Thank you. You can set aside that exhibit
3 for now. I'll have you take a look at a document to
4 be marked as Exhibit 2.

5 Mr. Martinez, this is the registration
6 information for Lantern Light Corporation that is from
7 the Secretary of State's website. Now, according to
8 page 2 of this website, you are the president and
9 chairman of AIS registered as Lantern Light
10 Corporation; is that correct?

11 (Marked for identification Exhibit 2.)

12 A. Yes.

13 Q. And what are your duties in that role?

14 A. I'm the principal of the company. I
15 oversee all operations. I manage the day to day and
16 run the business in general. I -- does that answer
17 your question?

18 Q. Mr. Martinez, the questions I'm asking
19 today, as I stated before, you are under oath. What
20 you should -- are required to provide is all the
21 information that you believe, that is, that you know
22 about the question that you believe is responsive to
23 the question. So if you believe that you've
24 completely described your duties as the president and
25 chairman, then that's an appropriate answer.

1 A. Okay.

2 Q. And is there any difference between your
3 role as president and your role as chairman?

4 A. No.

5 Q. Turning to page 1 of Exhibit 2. AIS,
6 registered as Lantern Light Corporation, first filed
7 with the Secretary of State, according to this
8 document, on September 7, 2010; is that correct?

9 A. Yes.

10 Q. And since the corporation first filed in
11 September 2010, have you been the president and
12 chairman?

13 A. Yes.

14 Q. And why does AIS go by "Advanced
15 Information Systems" but register under the name
16 "Lantern Light Corporation"?

17 A. We're an S-type corporation. When I first
18 went into doing this I wanted the -- it was just
19 something I wanted. I wanted the corporation to be
20 one thing and the d/b/a as another.

21 Q. And according to page 2 of Exhibit 2, Lisa
22 Kelley is the secretary and treasurer of AIS; is that
23 correct? Is Ms. Kelley the secretary and treasurer?

24 A. Yes.

25 Q. And what are Ms. Kelley's duties in that

1 role?

2 A. Lisa is the controller of the company and
3 my right hand.

4 Q. And can you describe a little bit more what
5 you mean by the "controller" or the "right-hand man"?

6 A. She basically handles all of the
7 bookkeeping, the financials. She is someone I bounce
8 ideas off of as far as my decisions on ways -- things
9 I'm doing with the company and things of that nature.

10 Q. And has Ms. Kelley been in that role since
11 the corporation first filed its papers in September
12 2010?

13 A. Yes.

14 Q. And are there any other officers of AIS
15 besides yourself and Ms. Kelley?

16 A. No.

17 Q. Have there been at any time?

18 A. No.

19 Q. How many offices does AIS have?

20 A. One.

21 Q. Where is that office located?

22 A. In Kent. This address right here, 1819
23 Central Avenue South, Suite 46, Kent, Washington
24 98032.

25 Q. And at any time has AIS had more than one

1 office?

2 A. Yes.

3 Q. What's the most offices that AIS has had?

4 A. Three.

5 Q. And when did AIS stop having three offices?

6 A. When we had three offices, we had the Kent
7 facility, which was our main office. Then we had a
8 Tacoma office and a Gig Harbor -- Bremerton location.
9 We decided to move from Bremerton to Gig Harbor
10 location, and at that point is when we decided to
11 consolidate Tacoma and Gig Harbor -- Tacoma and
12 Bremerton to Gig Harbor. So at that point we had two
13 offices, Tacoma and Gig Harbor. As time went on a
14 decision was made to further consolidate and just
15 house everybody in one building.

16 Q. When was that decision made to consolidate
17 into one building?

18 A. I don't have an exact date.

19 Q. Approximately how long ago?

20 A. A year and a half ago.

21 Q. And currently how many employees does AIS
22 have?

23 A. Currently we have -- including supervisors?

24 Q. Anyone that AIS classifies as an employee,
25 yes.

1 A. Estimate of 23.

2 Q. And of those 23 how many are installers?

3 A. Eighteen.

4 Q. Since AIS started in September 2010, has
5 AIS at any time had more than 18 installers?

6 A. Yes.

7 Q. What's the most installers that AIS has had
8 at any one time?

9 A. 32.

10 Q. And approximately when was that? When did
11 AIS have 32 installers?

12 A. When we had the Tacoma, Bremerton and Kent
13 facilities, and each facility approximately ran about
14 10 technicians, or installer technicians.

15 Q. So, you testified earlier that AIS
16 consolidated into one location approximately one and a
17 half years ago. So was it approximately one and a
18 half years ago that AIS had 32 installers?

19 A. No. No. At that point, one of the main
20 reasons why we decided to consolidate, it was because
21 of our shortened tech count. And -- yeah, that's the
22 answer to your question.

23 Q. So it was prior, it was more than a year
24 and a half ago?

25 A. Possibly. I can't tell you exactly what

1 date.

2 Q. And what is -- what's your understanding of
3 the reasons for the reduction in installation
4 technicians?

5 A. Staffing. Staffing is tough. Churn rates.
6 Technicians leaving. Our ability to hire and keep the
7 foundation of our staff at a certain level.

8 Q. When you say "churn rate," what does that
9 mean?

10 A. Basically "churn rate" means the rate at
11 which your staff increases or decreases at any given
12 moment. When we churn technicians it's basically
13 somebody leaving or somebody coming in.

14 Q. And so are you saying -- is your testimony
15 that AIS has a high churn rate?

16 A. Yes.

17 Q. Does that mean there's a lot of turnover?

18 A. Yes.

19 Q. When you say that the effect of -- or,
20 excuse me, that the reduction in installers is partly
21 due to the ability to hire, what do you mean by that?

22 A. To find good candidates. Ability to
23 recruit and interview and find good fits for the type
24 of work that we do. And then employee retention is a
25 big thing also. Once we've hired and trained somebody

1 from the ground up, just retain them. Keeping them,
2 the technician, motivated or happy with the job.

3 Q. So, there's currently 23 employees, and 18
4 are installers?

5 A. Yes.

6 Q. So what are the other five employees?

7 A. 19 -- 19, 20 would be two supervisors. 21
8 would be part-time warehouse employee. 22 would be
9 somebody that helps with payroll. And then 23 would
10 be -- I actually included Lisa in that 23. So it's
11 actually 22. Excuse me.

12 Q. And the supervisors, the two current
13 supervisors at AIS, what are their duties?

14 A. They assist in the day-to-day management of
15 the 18 installer technicians.

16 Q. And what do they do to assist in the
17 day-to-day management? What is kind of their
18 day-to-day responsibilities?

19 A. In the morning they take a look at the
20 workload received through the work orders. They make
21 sure that they're divided up evenly. They assign what
22 they -- certain projects to certain technicians. They
23 have a full working knowledge of the capability of all
24 of our installer technicians. Once that is done, the
25 technicians that do report to the office are assigned

1 the work or given out paper copies of work orders, and
2 then they request whatever equipment they need for
3 that day, and the supervisors issue out the equipment
4 they need for that day to the technicians. It's
5 basically slash warehouse duty. They scan out the
6 receivers that they need for that day, or whatever
7 equipment they need for that day.

8 At that point they also -- supervisors
9 mentor and counsel the technicians on anything that --
10 any feedback that we've received or anything that --
11 meeting type of -- informational type of short
12 one-on-ones with the technicians on what they've seen
13 out in the field as far as their installation
14 practices or how their work is looking, you know, day
15 to day, week to week.

16 Once the technicians are issued their
17 equipment and they leave the facility to go to their
18 work assignment or their first scheduled install or
19 upgrade, the supervisors are then delegated to just
20 managing the day, supporting the technicians. Making
21 sure that they have everything they need to complete
22 the work assigned to them. They answer any -- answer
23 questions throughout the day any technician might
24 have, specifically with instances with equipment not
25 working properly to needing more equipment. They

1 drive out equipment to the technicians if a technician
2 needs something more or a technician forgot to pick
3 something up.

4 They monitor the technician's progress
5 throughout the day with this website application
6 called "Click" where they can see specifically where a
7 technician is at, their progress. If they're falling
8 behind they have the ability to shuffle jobs around.
9 If a technician is falling behind, if a technician
10 gets done early they'll take a job off technician A
11 and put it on technician B and vice versa.

12 They also do quality inspections of our
13 installations from either days prior, weeks prior, or
14 months prior. Verifying that installations that we
15 are doing are up to standards. They also assist me
16 with whatever projects that I may have going outside
17 of anything with DirecTV. They're -- you know, they
18 -- I described Lisa as my right hand. They'd be my
19 left and left second hand, if that makes any sense.

20 Q. So you stated that the supervisors will do
21 quality inspections of the installations?

22 A. Yes.

23 Q. And does that mean that they -- what does
24 that mean?

25 A. They could either do one of two ways. They

1 could either do a live-time quality inspection, which
2 means they'll visit one of our technician's job sites,
3 while they're on the job site and view how they're
4 doing their job. Making sure that they're putting
5 things where they need to be and just doing an
6 overall assessment of the performance of the
7 technician. Making sure they're showing their ID
8 badges to the customer. Making sure they're cleaning
9 up after themselves. That's one type of quality
10 inspection, live time.

11 The second type is they'll do a visit for a
12 job site that's already been completed, most times the
13 day prior, sometimes weeks, just depending on the
14 workload for that day and what they have time to do.
15 And in that instance, they'll go to a job site that's
16 already been completed, try to make customer contact
17 if the customer is home. They'll, you know, ask the
18 customer questions, questions like did the technician
19 show his or her ID badge. Did the technician clean up
20 after him or herself. Did the technician show you
21 where he or she was going to put the satellite dish.
22 Just interview questions, basically, on the whole
23 scope of the job. If the customer is home.

24 If the customer is not home then they
25 generally -- or not generally. They just inspect the

1 outside work and see dish placement, cable routing and
2 ground block placement. Ground block is basically the
3 connection point between the satellite dish and the
4 receiver on the side of the home.

5 Q. And how do the supervisors determine which
6 jobs to go do quality inspections on?

7 MR. KELLY: One more time, please, Joe. I
8 just didn't hear it. Can you repeat the question.

9 Q. The question was how do the supervisors
10 determine which quality -- which jobs to perform these
11 quality inspections on?

12 MR. KELLY: Thank you.

13 A. Most of the time it's at their discretion.
14 There have been times where I have specifically asked
15 them to take a look at a specific technician's work
16 based on the reporting -- reports that I get back. A
17 technician that has high service numbers, basically
18 what that is is that a technician -- we have
19 technicians that do work, and for some reason a
20 service tech from DirecTV has to follow behind us to
21 fix something that we did or did not do. So -- and I
22 get reports basically telling me percentages of said
23 service work.

24 So if I have a technician that has high
25 service numbers that causes -- raises a red flag and

1 causes concerns of quality, at that point, I
2 specifically tell the supervisors to do quality
3 inspections on that technician that I have concerns
4 about. But for the most part, it's mostly at their
5 discretion. The second part, it's anybody that I
6 designate, that I want QC'd.

7 Q. And you said that you would determine the
8 individuals based on reports that you receive?

9 A. Yes.

10 Q. And who do you receive these reports from?

11 A. DirecTV upper management, specifically the
12 site manager of the site.

13 Q. And what will these reports detail?

14 A. Those reports detail service -- they're the
15 call metrics, metric reporting. And the metrics give
16 me a detailed assessment of service percentages, how
17 much work they're having to go back on behind us.
18 They give me completion percentages of the total work
19 issued to my -- to AIS by DirecTV, how much of it
20 we're actually completing. They give me percentages
21 on post call data.

22 All of DirecTV's customers get what's
23 called a post call done on them. It's a quality call
24 designed to show DirecTV basically customer
25 satisfaction survey. And that post call has things in

1 it like did the technician show his or her ID badge.
2 Did the technician clean up after him or herself. So
3 post call data is part of the metrics.

4 Also part of the metric reporting is phone
5 line connectivity data, how many receivers did our
6 technicians hook up to phone lines. Cinema connection
7 kit data. How many cinema connection kits did we
8 install and are they reporting back. Protection plan
9 data. How many -- those are basically warranties or
10 things of that nature. How many protection plans did
11 the technician upgrade the customer to or offer the
12 customer and did the customer sign up for.

13 There's a lot of metrics. Those are the
14 main ones. I could continue if you'd like.

15 Q. Yeah, please.

16 A. Sure. So we talked about post calls,
17 protection plan, telephone lines, cinema connection
18 kits. NPS data, net promoter score. And basically
19 what a net promoter score is, it's part of the post
20 call process, but net promoter score is something new
21 within the last year where basically at the end of the
22 post call a technician -- the customer gets asked a
23 question. And specifically the question is, based on
24 your experience with this technician here on your job
25 site, would you promote the product to your friends

1 and family. So that's a specific metric. Excuse me.
2 I'm drawing a blank. I'm sorry.

3 Estimated time of completions, that's part
4 of the metric reporting. And what that is, is, when a
5 technician goes on site they need to input what time
6 they believe they're going to be completed with the
7 work that they're doing at that point.

8 Failure tracking. Failure tracking is
9 basically when we install a piece of equipment that is
10 serialized, we need to make sure we're adding that to
11 the work order. To my knowledge, right now that's it.
12 If I remember anything I'll go back.

13 Q. Okay. Thank you. And these -- this metric
14 reporting, is it divided up by installer? So does it
15 say, for example, how an installer is doing on their
16 service percentage or completion percentage as opposed
17 to AIS generally?

18 A. Both. I get a group reporting and specific
19 company reporting.

20 Q. And what do you do when the reporting
21 you're getting about a specific technician is below
22 what you expect?

23 A. Well, initially we get these reports
24 weekly. Sometimes they're inconsistent, but for the
25 most part we get them on a weekly basis. What

1 initially I do when I get the reporting is I do my own
2 initial assessment on the team's performance and the
3 company's performance.

4 And I do my own diagnosis and, you know,
5 take my own notes in preparing for my next supervisor
6 meeting, which I have every Monday at 10:00. I have a
7 meeting with my supervisors. We go over the metrics
8 and I go over my concerns. And I go over
9 specifically, when I see a technician having trouble
10 with a certain metric, identify who we need to mentor
11 and who we need to up train and who we need to monitor
12 to basically improve certain aspects of his or her
13 performance.

14 Q. And what does AIS do if those performance
15 improvement methods don't succeed, if the installer
16 continues to not perform?

17 A. Well, it's in my best interests to continue
18 mentoring and up training a technician, and that can
19 take week after week, or even months, but if I see a
20 technician is either ignoring our attempts in up
21 training, or is, for some reason, unsuccessful -- we
22 cannot get him or her to succeed in a certain metric
23 -- then I start the process of -- I'm a small company.
24 It's nothing formal like a big company where write-up
25 one, two, three and you're out, but then I start

1 having conversations of if -- listen, if this doesn't
2 improve, I'm going to have to let you go, or if this
3 doesn't improve I'm going to have to put you on some
4 type of suspension or whatnot. It's all at my
5 discretion. I've let things go sometimes longer than
6 they should, but it's -- it's technician to
7 technician. It's based on what I see right there and
8 effort.

9 Q. And has AIS fired any installers because
10 they continued to receive poor metric reporting?

11 A. Yes.

12 Q. And can you give an approximate number as
13 to how many since AIS was formed in September 2010?

14 A. I cannot.

15 Q. Is it something that happens every month?

16 A. No, no. Not even close. Like I said, it's
17 -- I'm a small company. I give lots of chances. I
18 have members of my team that have consistently drug us
19 down month after month and I'll still hold on to them
20 hoping for the best. Well, not hoping for the best,
21 but just continually working for them, waiting to see
22 some glimmer of hope. But I haven't fired anybody due
23 to metrics on a consistent basis, no.

24 Q. Has it occurred at least five times in the
25 last year?

1 A. No.

2 Q. You testified earlier that one of the
3 duties for the supervisor is dividing up the work
4 orders that come in from DirecTV?

5 A. Yes.

6 Q. And that the supervisors will assign
7 certain jobs to certain technicians?

8 A. Yes.

9 Q. And what do you mean by that?

10 A. Based on ability levels, some of our more
11 senior technicians are more experienced than our newer
12 technicians, so they can handle a larger work volume
13 than a newer technician. So, in the mornings they'll
14 take a look at what a technician has in his or her
15 Click or whatnot. Click is basically a terminology
16 for what they have on their associated tech number.

17 And they'll make a decision whether they'll
18 either find that as an acceptable workload or say, no,
19 no. I want this tech to do X. And they'll take jobs
20 -- two jobs from here and put it on to here. And
21 they'll take the jobs from here and put it on to here.
22 So they do a good shuffling of work every morning.

23 Q. And the supervisors that are currently at
24 AIS, are they former -- were they former installation
25 technicians?

1 A. Yes.

2 Q. Is AIS's general practice to have
3 supervisors be former installers?

4 A. No.

5 Q. Okay.

6 A. It just worked out that way.

7 Q. And what are the names of the current
8 supervisors at AIS?

9 A. Dennis Edson and Ryan Caldara.

10 Q. When AIS had up to 32 installers, did it
11 have more than two supervisors?

12 A. Yes.

13 Q. And what's the most amount of supervisors
14 that AIS has had?

15 A. Five.

16 Q. And beside the supervisors and the
17 installers and the other payroll folks, are there any
18 other managers or executives at AIS?

19 A. No.

20 Q. So you and Lisa are the sole executives?

21 A. Yes.

22 Q. And that's always been the case?

23 A. Yes.

24 MR. LAKE: Why don't we take a look at a
25 document that will be marked as Exhibit 3.

1 (Marked for identification Exhibit 3.)

2 Q. Have you had a chance to review Exhibit 3?

3 A. Yes.

4 Q. Are you aware of a corporation named Lumin,
5 Incorporated?

6 A. Yes.

7 Q. And this document, from the Secretary of
8 State's website, states that you are the
9 vice-president of Lumin, Incorporated; is that
10 correct?

11 A. Yes.

12 Q. And what were your duties at Lumin?

13 A. Similar to what I'm doing with AIS right
14 now. I joined Mike, or Lumin, Inc. -- I can't give
15 you an exact date. It was around 2008. Sometime in
16 2008 I joined Lumin, Inc. And when I joined I was
17 there to manage -- pretty much exactly what I do right
18 now.

19 Q. And so when you joined Lumin in
20 approximately 2008, did you have the same role as you
21 did when you left Lumin?

22 A. Pretty much. It's -- Mike and I decided to
23 part ways, or I decided to leave Lumin, or Mike
24 decided to shut down Lumin around when we -- actually
25 not around -- 2010, when I started AIS. But what I

1 was doing here at Lumin is similar to what I was doing
2 at Lantern Light, more in a -- where here I have
3 pretty much -- it's mine, it's sole, I run it. Here
4 it was more of a partner situation, where we both had
5 input in how we ran things and things like that. I'm
6 sorry, I don't mean to say "things like that." We had
7 input on how we ran things together.

8 Q. And so, according to Exhibit 3, Lumin
9 became an inactive corporation as of February 1st,
10 2011, after registration expired on October 31st,
11 2010. Does that sound correct to you?

12 A. The exact date when it got inactive, I
13 don't know. Mike was in charge of that, but it should
14 be correct, yes. We dissolved our partnership
15 sometime in 2010. And he -- being that I joined Lumin
16 and Lumin was more his than mine he was to dissolve
17 Lumin also.

18 Q. What were the circumstances as to the
19 dissolution of the partnership?

20 A. Mike wanted to go one way and I wanted to
21 go another is basically it.

22 Q. Soon after you left Lumin you started AIS?

23 A. Yes.

24 Q. Did any of the installers from Lumin
25 continue to work for AIS?

1 A. All of them.

2 Q. So, AIS effectively absorbed Lumin?

3 A. Yes.

4 Q. Beside the installers, what other assets
5 did Lumin bring in to the -- to AIS?

6 MR. KELLY: One more time.

7 Q. I said, besides the installers what other
8 assets did Lumin bring to AIS?

9 MR. KELLY: Objection. Mischaracterizes
10 his testimony about "bringing in." I think you can
11 rephrase. He said it was dissolved.

12 Q. You can answer the question. You can
13 answer the question, Mr. Martinez.

14 MS. TRUONG: If you can answer the
15 question.

16 THE WITNESS: Yeah.

17 MS. TRUONG: Go ahead.

18 A. So part of our -- when Mike and I dissolved
19 Lumin, wrote out our dissolution of partnership,
20 basically at that time we had -- I can't give you an
21 exact number, but we had some Ford Rangers, a box
22 truck, and whatever we had in the office at the time,
23 being some laptops, a computer, laptops and a
24 computer, some office supplies. Mike, when we -- when
25 we agreed on the dissolution Mike left with two trucks

1 to -- a van and a truck. That's it.

2 Q. And did AIS take over Lumin's offices?

3 A. Yes. It's the same -- where it says --
4 yes. We were operating in the same facilities where
5 Lumin operated, yes.

6 Q. So, how was Lumin different than AIS, if at
7 all?

8 A. Well, no. Aside from who solely runs the
9 companies there's not much difference.

10 Q. Was Lumin's --

11 A. Well, excuse me, can I amend that?

12 Q. Please.

13 A. As far as that is concerned there's a huge
14 difference on the business model and how we operate.

15 Q. Okay.

16 A. Does that make any sense?

17 Q. Well, if you could elaborate a little bit
18 on what you mean by that.

19 A. Well, whereas Lumin, for a portion of the
20 time, operated under a 1099 format and then was
21 converted to a W-2 format, whereas Lantern Light has
22 always been W-2. As time has gone on and we've got --
23 I've had more business acumen, more managerial
24 courage, I've learned how to operate the business in
25 more efficient manners. I've made changes as far as

1 compliance, compliance, and make sure we comply in
2 certain rules and regulations locally, statewide and
3 federally. But those are the major changes. As far
4 as the work that is being done, that's the same.

5 Q. So Lumin was -- was Lumin's primary
6 customer DirecTV?

7 A. Yes.

8 Q. And did Lumin installers perform
9 essentially the same services that the installers at
10 AIS perform?

11 A. Yes.

12 Q. Now, you mentioned that Lumin converted the
13 installers from a 1099 independent contractor status
14 to W-2 employees?

15 A. Yes.

16 Q. Were you involved in that decision?

17 A. No.

18 Q. Were you at Lumin when that decision
19 happened?

20 A. No.

21 Q. So do you know anything about that
22 decision?

23 A. There was a time -- excuse me if my
24 knowledge is not exact. This is like around -- I
25 joined Lumin in 2008, and at that point the employees

1 were all W-2. Before that, to my knowledge, they were
2 1099 subs. And the reason for that change was, as
3 with all changes, somebody came and did an inspection
4 or did some type of audit and it was deemed,
5 specifically in the state of Washington, that the type
6 of work that we were doing and how we were managing
7 the technicians was classified not as 1099s. W-2's.
8 So that's when that change came about. But when I
9 joined Lumin they were already -- that change had
10 already happened.

11 Q. And do you know anything about what other
12 information was provided by the state of Washington at
13 that time?

14 A. No.

15 MR. LAKE: I'll have you take a look at a
16 document to be marked as Exhibits 4. With the
17 exhibits that we've already used we can put them aside
18 for the court reporter.

19 THE WITNESS: Okay.

20 (Marked for identification Exhibit 4.)

21 Q. Now, Mr. Martinez, these are the responses
22 for information of AIS. I'd like you to turn to page
23 7. Do you see a heading called "Timeline of Changes"?

24 A. Yes.

25 Q. The first sentence states, "After the

1 August 2008 Washington state audit, Lumin,
2 Incorporated, the predecessor company to Lantern Light
3 Corporation, d/b/a AIS, changed pay structure for all
4 technicians from 1099 subcontractors to employees."

5 Do you see that?

6 A. That sounds about right, yeah.

7 Q. Is it your testimony today that that change
8 occurred in approximately August 2008?

9 A. Around that time, yes.

10 Q. And at that time were you -- had you joined
11 Lumin?

12 A. A month or two within that, something like
13 that, yes.

14 Q. But when you started it's your testimony
15 that the installers were already employees?

16 A. Yes.

17 Q. Is there any other information you can
18 provide today about that decision to turn the
19 installers from 1099 subcontractors to employees?

20 A. No.

21 Q. And Mr. Martinez, how did you -- was Lumin
22 the first -- your first job in the business of cable
23 or satellite installation?

24 A. No.

25 Q. And how did you first become involved in

1 that business?

2 A. 2007 I became -- I went to work for a
3 company called -- it was a subcontractor for -- the
4 name of the company was -- I'm sorry, I can't remember
5 the name of the company, but I started as a contractor
6 with them, and I performed installation of the DirectTV
7 product for them.

8 From there I went to another company called
9 Star Satellite and did the same exact thing.
10 Performed installations of the DirectTV product for
11 Star Satellite. And then from there I kind of --
12 that's when I started to -- wanting to start my own
13 company and kind of branched out and things of that
14 nature. I'm sorry. I keep on doing that.

15 So I wanted to branch out. And in those
16 days the heads of the -- the different contracting
17 firms would have monthly meetings with the site
18 managers to go over compliance and things of that
19 nature. And that's where I met Mike, and that's where
20 Mike invited me to join Lumin, Inc.

21 Q. And when you joined Lumin, Inc., were you
22 also doing installation work?

23 A. Yeah. I was managing and doing an install
24 here and there, yes.

25 Q. And at Lumin, Inc., did you have primary

1 day-to-day responsibilities of the corporation?

2 A. At Lumin, yes.

3 Q. From the time that you began?

4 A. Yes.

5 Q. Did you have prior experience before 2007
6 running businesses?

7 A. No. I'm sorry. No, I don't.

8 Q. How does AIS find installers to hire?

9 A. We -- basically there's one way, the
10 Internet. We post an ad on craigslist, and there's an
11 e-mail associated with that advertisement of
12 employment. Resumes get e-mailed to that e-mail, and
13 we go through the resumes and call the applicants that
14 we think would be good fits. Once we call the
15 applicant and they answer, we try to set up an
16 interview and interview the applicant, and at that
17 point make a decision whether to extend an offer or
18 not.

19 Q. And what requirements does AIS have for
20 installers?

21 A. They have to be able to pass a background.
22 The background consists of criminal, motor vehicle,
23 and drug test. As far as requirements, most of our
24 technicians drive their own rigs. Trucks, I mean. As
25 far as what I'm looking for in a candidate, I tend to

1 look for somebody that maybe has some construction
2 experience or somebody that has -- I lean towards
3 things like that. Somebody that knows how to use
4 tools. But that's never the deciding factor. I
5 mostly am looking for somebody that has a good energy.
6 Wants -- wants full-time work. Wants -- has ability
7 to learn.

8 I've trained people from -- that's worked
9 at the Gap. So there's no real determining factor as
10 far as what I'm looking for. But the basic stuff is
11 they have to be able to pass a background. They have
12 to be able to do those things. And they just have to
13 have a real good attitude and a real willingness to
14 want to learn.

15 Q. And do the candidates have to have prior
16 experience as installers?

17 A. No.

18 Q. Who participates in the decision to hire an
19 installer?

20 A. Me. I do.

21 Q. Anyone else?

22 A. No.

23 Q. And DirecTV imposes certain requirements
24 before installers can work on jobs for their
25 customers; correct?

1 A. Of my employees?

2 Q. Yes.

3 A. Correct. Well, they have certain
4 standards. All employees -- all of my employees,
5 before they can step foot on a job site, they have to
6 have two certifications. They need to be SBCA
7 certified, and they need to have something called a
8 "Jones certification." And a Jones certification is
9 basically a determining test that the -- that my
10 employee, AIS employees, have a base knowledge -- base
11 working knowledge of the product and how to install
12 it. And what rules there are as far as -- in
13 installing that product.

14 And SBCA is a similar test. The SBCA is a
15 similar base working knowledge of the satellite
16 industry in general as far as -- it has questions like
17 how -- satellite A, how far away is it from earth and
18 things of that nature. Did it again, "things of that
19 nature." It has questions of things from earth and
20 specific satellite questions of the industry.

21 Q. And the SBCA and the Jones certification,
22 who provides this training to the new AIS installers?

23 A. We do. Jones -- we have an account set up
24 with the Jones facility. We have two options. When
25 we are training -- we train a new candidate, new hire,

1 typically training lasts between four to five weeks.
2 Training typically is about 80 to 85 percent in the
3 field, on the job; 15 percent classroom. And when I
4 say classroom, specifically with the Jones
5 certification, it's an on-line self-paced course work
6 that a technician can take at his or her leisure from
7 home or in our offices. But is -- and that test --
8 actually, going through that course is only required
9 if a technician fails their first attempt at the exam.

10 So we can take the exam without going
11 through the course work, which we generally try to do
12 because the course costs more money than, obviously,
13 just taking the exam. And we have our own training
14 materials and our own notes. So we -- when we do some
15 of the classroom stuff, we give our candidates study
16 materials for, you know, question and answer sheets
17 for the test, stuff that they'd be seeing. And that's
18 for that one.

19 The SBCA, we have our own account with
20 SBCA. And it's a similar -- there's no course work,
21 but there is training materials that we have to
22 prepare them for the test. And that's, again, that's
23 here in our facilities, and it's 100 percent on line.

24 Q. You stated that there was an exam for the
25 Jones certification?

1 A. Yes.

2 Q. Where does that exam come from?

3 A. Those exams are administered based on the

4 candidate's home locale. It can be anywhere from a

5 Boeing facility to -- you may have to correct me if

6 I'm wrong -- to a library. Lisa would know, actually,

7 the answer to that question better than I do. It's at

8 a secure location designated by Jones. It's like a

9 testing facility where you go to take a test to become

10 an electrician. It's computer-based, but it's an

11 off-site facility.

12 Q. And why does AIS require installers to

13 complete the Jones certification?

14 A. Well, we won't -- our technician that we

15 hired wouldn't get -- wouldn't be able to complete any

16 work for DirecTV otherwise. It's a requirement of

17 DirecTV that all of our technicians have those two

18 certifications.

19 Q. The Jones and the SBCA?

20 A. Yes.

21 Q. So the requirement comes from DirecTV?

22 A. Yes.

23 Q. And who pays for the SBCA certification or

24 the Jones certification?

25 A. AIS does.

1 Q. Are installers paid for the time spent in
2 these trainings?

3 A. Yes. We pay for training -- training is
4 paid at an hourly rate. It's paid at Washington state
5 minimum wage, which is nine -- it's changing pretty
6 soon, but as it is right now it's nine -- I don't know
7 the exact cents. It's whatever it says on the poster
8 that we have in the office. And right now it's paid
9 at an hourly rate and all trainees are -- hours are
10 tracked hourly.

11 Q. The training is conducted at AIS's offices
12 or do they --

13 A. Both. Like I said, 85 percent is
14 on-the-job training. So they're physically out with
15 our technicians out in the field seeing how we install
16 a product, learning that way.

17 Q. Let me rephrase the question. The course
18 work training takes place at AIS's offices?

19 A. Yes. We show them videos. I have videos,
20 installation videos, training videos how to do this or
21 how to do that.

22 Q. How to do the specific tasks they'll be
23 doing on DirecTV products?

24 A. (Nodding head.)

25 Q. So does DirecTV give AIS the videos?

1 A. Yeah. We have access to DirecTV training
2 websites that has all those videos on it, and we're
3 able to download those videos, have them on our hard
4 drives, our equipment. And we can access that at any
5 time.

6 Q. So AIS requires installers pass a
7 background check and drug test; correct?

8 A. Correct.

9 Q. And where does that requirement come from?

10 A. Like --

11 Q. Why does AIS require installers to pass a
12 background check and a drug test?

13 A. Similar to the Jones and the SBCA, without
14 it a technician wouldn't be authorized to perform work
15 for DirecTV.

16 Q. So DirecTV requires that AIS installers
17 pass a background check and drug test?

18 A. Yes.

19 Q. Do you know what sort of past conduct would
20 cause an individual to fail the background check?

21 A. Yes.

22 Q. What sort of conduct?

23 A. Motor vehicle. They can't have more than
24 four speeding tickets. I don't have the specifics in
25 front of me, but we do have literature that tells us

1 exactly what's a pass/fail. I know as far as criminal
2 they can't have any felonies. I believe a candidate
3 cannot have any serious misdemeanors, specifically
4 anything with theft involved. DUIs are a big deal.
5 So that's a big disqualifier. As far as drugs, if you
6 show positive for things, like any type of illegal
7 drug is a disqualifier. Illegal drugs right now still
8 is marijuana, cocaine. Things of that nature. Motor
9 vehicle, criminal, drug. To my knowledge that's...

10 Q. And who sets the terms of what will fail
11 the background check?

12 A. It says -- the company's name is Sterling,
13 and it's a Sterling -- the name of the literature that
14 we have is Sterling criteria for pass/fail.
15 Specifically who sets Sterling's criteria, it's
16 DirecTV.

17 MR. LAKE: Mr. Martinez, I'll have you take
18 a look at a document to be marked as Exhibit 5.

19 (Marked for identification Exhibit 5.)

20 Q. Have you seen this document before?

21 A. This the contract between DirecTV and
22 Lumin.

23 Q. Well, please take your time looking over
24 that, and I'd like you to confirm that.

25 A. Sure. Yes. This looks like the contract

1 between DirecTV and Lumin. It looks similar to the
2 contract I have with DirecTV right now. But the Lumin
3 one I didn't sign, so I don't have specific knowledge
4 of it, but I have more knowledge of the one that I
5 signed.

6 Q. So there's another contract that AIS has
7 signed --

8 A. Uh-huh.

9 Q. -- with DirecTV?

10 A. Uh-huh. Yeah.

11 Q. Is that a yes?

12 A. Yes. I'm sorry. Yes, it is. I don't have
13 -- AIS has got its own signed contract with DirecTV.

14 Q. Can you turn to page 43. It's the second
15 to last page of the document. And also look over page
16 44 as well. Is that your signature above the heading
17 "Ramon Martinez, vice-president Lumin, Incorporated"?

18 A. Yes.

19 Q. Do you recall signing this assumption
20 agreement on approximately January 6, 2011?

21 A. Yes.

22 Q. And is that your signature above "Ramon
23 Martinez, president/CEO, Lantern Light Corporation"?

24 A. Yes.

25 Q. Do you recall signing on behalf of Lantern

1 Light approximately January 6, 2011?

2 A. Yes.

3 Q. So you've seen this assumption agreement
4 before?

5 A. Yes.

6 Q. Pages 43 and 44?

7 A. Yes. So, can I speak?

8 Q. Please.

9 A. So, basically this was the segue between
10 Lumin and Lantern. And this was basically a document
11 saying that I was authorized to make that transition.
12 And I think it was an easy segue between companies.

13 Q. And after signing that assumption
14 agreement, you then, at some point later on, executed
15 a new contract with DirecTV?

16 A. Yes.

17 Q. Can you turn to page 26 of the document, of
18 this contract. Do you see the paragraph entitled
19 "Subcontractors"?

20 A. Yes.

21 Q. Do you see the three subheadings "(i)," "
22 "(ii)," and "(iii)" in the first sentence?

23 A. Yes.

24 Q. The first "(i)" states that the contractor
25 will provide evidence of insurance, background check,

1 drug screen, which we've talked about. The second
2 deals with receiving and successfully completing the
3 SBCA or other approved training.

4 Now, the third states that, going back to
5 the beginning first: In no event shall a contractor
6 appoint or allow any third party or subcontractor to
7 perform and provide any services prior to -- turning
8 to subpart 3 -- receiving an approval from DirecTV,
9 which approval may or may not be granted in DirecTV's
10 discretion. Do you see that?

11 A. Yes.

12 Q. Does the contract that DirecTV has with AIS
13 have a similar provision?

14 A. I believe so.

15 Q. Well, let me ask the question differently.
16 When AIS determines that it wants to hire an
17 installer, does AIS have to receive approval from
18 DirecTV?

19 A. No.

20 Q. Before an installer can perform work on
21 DirecTV customer homes, does AIS have to receive an
22 approval from DirecTV?

23 A. No.

24 Q. So once AIS hires an individual and that
25 individual completes the training and background

1 checks that we've discussed, are there any other steps
2 that AIS goes through before that installer goes out
3 and starts working on DirecTV projects?

4 A. We submit a request for a tech number to be
5 issued. Once that tech number is issued we submit a
6 -- we let them know the technician has completed
7 training and has passed the certifications and we want
8 them to start pulling a work -- pulling a route or
9 work as of a certain date.

10 Q. Does AIS provide any evidence of completing
11 -- the installer completing the training or passing
12 the background check or drug test?

13 A. Yes. Certain numbers associated with
14 passed course work. I don't know if it's a serial
15 number, but it's a completion number or...

16 Q. After AIS makes this request to have that
17 installer get a tech ID and start receiving work
18 orders, has DirecTV ever responded with requests for
19 additional information before it will do that for an
20 installer?

21 A. No.

22 Q. Has DirecTV ever made any follow-up of any
23 kind about an installer that AIS wants to start
24 working on DirecTV products?

25 A. No.

1 Q. Has DirecTV ever said that it does not
2 approve of a certain installer before that installer
3 can do any work on their customers' homes?

4 A. No.

5 Q. Mr. Martinez, can you please describe the
6 duties of installers for AIS?

7 A. The duties of an AIS technician is
8 basically the installation and activation of DirecTV's
9 product, be it either high definition or basic digital
10 installation. A technician reports to the -- reports
11 to AIS offices to pick up whatever paperwork or
12 equipment needed to fulfill installation duties
13 throughout the day.

14 Once they've picked up the equipment and
15 paperwork that they need they report to the job site
16 and install what the DirecTV customer has requested on
17 a work order that's been issued to them. The date can
18 either consist -- every day varies. The workload
19 varies day to day. So, on any given day a technician
20 could have two or three or four appointments. And a
21 technician goes through his or her day as the
22 appointments get completed of the installation of the
23 DirecTV product.

24 Q. Besides installation, are there other
25 services performed by the AIS installers?

1 A. No.

2 Q. How -- where do the specifications come
3 from on how AIS installers are supposed to perform the
4 installations?

5 A. There's a standard installation practice
6 and policy guideline, and it's all directed by
7 DirecTV. They tell us exactly how they want to see
8 the work performed.

9 (Marked for identification Exhibit 6.)

10 Q. Mr. Martinez, please take a moment to
11 review this document that's been marked as Exhibit 6.

12 A. Okay.

13 Q. Have you seen this document before?

14 A. No. This specific one, no.

15 Q. Have you seen a similar list of
16 instructions on performing residential installations?

17 A. Yes.

18 Q. And did that document, the one that you're
19 describing, come from DirecTV?

20 A. Yes.

21 Q. Do you provide a copy of these instructions
22 from DirecTV to installers so they understand how to
23 perform their duties?

24 A. No.

25 Q. So, are installers given any written

1 materials instructing them how to perform their
2 duties?

3 A. We have -- AIS has training materials that
4 we've put together. Training materials consist of how
5 installations are to proceed. How -- where the
6 satellites are located, best practices. The training
7 videos that we also watch have all of this in there
8 also.

9 Q. All of the information that's in Exhibit 6?

10 A. Pretty much. It has, you know, calling the
11 customer before we get out there, what -- best
12 practices. What we're supposed to do when we get
13 there.

14 Q. And these training videos are provided by
15 DirecTV?

16 A. They give it -- yes. They give us access
17 to their training website, and we grab them off their
18 website.

19 Q. The written training materials that you
20 were just describing about how installations are to
21 proceed and where satellites are located, who
22 generates those materials?

23 A. We do. And we've gone through a couple of
24 processes. Again, best practices. In years past
25 we've put books together for our installers. We've

1 gotten information from a variety of places. We found
2 that those books sometimes end up at the bottom of
3 somebody's truck. So then we've gone to best
4 practices, you know, a highlighted book that only had
5 a couple of pages. Each technician is different on
6 how they absorb and use the materials that we give
7 them.

8 We're still fine tuning the process of
9 training and how we disseminate the information, but
10 as far as literature given to the technician, these
11 days it's pretty limited because, like I said,
12 sometimes we spend a lot of money on these books. And
13 they're just -- they disappear within a week or --
14 because the job is the same. The job is identical day
15 to day, and through process in doing the job the
16 expectations are met.

17 Q. How many days per week do AIS installers
18 work?

19 A. Right now we're on a six-day rotation.
20 Well, throughout the year it's either five-day or
21 six-day rotation. What designates that is the
22 workload in the region.

23 Q. So, you said currently it's a six-day
24 rotation?

25 A. Yes.

1 Q. Since AIS was started in 2010, has it
2 always been either a five or six-day rotation?

3 A. Yes.

4 Q. When you were at Lumin, was it also either
5 a five or six-day rotation?

6 A. Yes.

7 Q. The entire time you were at Lumin?

8 A. Yes.

9 Q. What do you mean when you say it is based
10 on demand or work flow in going between the five or
11 the six-day schedule?

12 A. Throughout the work year there's -- it has
13 ebbs and flows. There's busy times of the year and
14 there's not so busy times of the year. I don't like
15 using the word "seasonal," but that seems to be the
16 best way to describe it. Seasonally there are times
17 where, you know, the workload is really there. I
18 mean, there's an abundance of work and we can't keep
19 up with it. But there are times of the year where
20 there's not a lot of work, and that's why we're on a
21 five-day rotation.

22 Q. Approximately how many months a year are
23 you on a six-day rotation?

24 A. That varies also. Last year I believe we
25 were on six days for six months. The year prior I

1 believe it was four months, but that totally varies
2 with the workload and, I guess, the best offer out
3 there for DirecTV customers and who is signing up for
4 it.

5 Q. What information does AIS have to be able
6 to anticipate, in advance, whether the next week
7 should be a six-day week or a five-day week?

8 A. Zero.

9 Q. So how do you decide, in a given month or a
10 given week, whether it's going to be a six-days or
11 five-days?

12 A. I get a call from a -- the site manager at
13 DirecTV, and we go over something that's called ADTX.
14 Basically what that is is the workload currently, the
15 projected workload and what it's going to be looking
16 like going forward. And at that time, we get a
17 request asking us, hey, are you guys willing to go six
18 days, or can you go six days, this is what the work
19 week is looking like and this is what we need. And I
20 say either yes or no.

21 Q. And that request comes from?

22 A. The site manager.

23 Q. Of DirecTV?

24 A. Yes.

25 Q. What goes into your decision whether to say

1 yes or no to that request?

2 A. Basically that's when the company really
3 makes its money for the year. We struggle through
4 parts of the year, and when we are given the
5 opportunity to go to six days more often than not we
6 jump at the chance. Technicians are excited. It
7 gives them an opportunity to make more money also.
8 The company is able to make more money and able to pay
9 off old debt. But it's -- the decision is easy. It's
10 basically more money.

11 Q. Do you recall ever saying "No" to the
12 request from DirecTV to go six days per week?

13 A. Honestly, no. That's -- seriously, it's
14 the time that we make the most money.

15 Q. And how often do these ADTX conversations
16 happen with the DirecTV site manager?

17 A. They're periodic. It's something that I'm
18 assuming he's monitoring on a weekly basis. I don't
19 know the exacts of his job, but I know that he
20 monitors it. And when the projection is showing that,
21 you know, the workload is going to be that, that's
22 when I get pulled in, saying, hey, this is how things
23 are looking, can you do it; if you can, when can you
24 do it, you know. So they don't dump it on me like,
25 boom, you're on six days. They give me opportunities

1 to prepare for it.

2 Q. So, is it fair to say that the norm is five
3 days a week unless the site manager has told you from
4 DirecTV that there's enough demand to have installers
5 work six days per week?

6 A. Yes.

7 Q. And how frequently do those conversations
8 happen with the site manager?

9 A. Well, the ADTX conversations are loosely a
10 couple times throughout the year. When they get more,
11 you know, like consistent, such as when we're getting
12 close to going on to being requested to go on a
13 six-day rotation -- but those are loosely throughout
14 the year.

15 Q. When the DirecTV site manager requests that
16 AIS installers begin working six days per week, are
17 you given a time period for how long -- how many weeks
18 that demand will be there to work six days per week?
19 Like, can you work six days per week for the next
20 couple months or something like that?

21 A. I don't have an end date, if that's what
22 you're asking.

23 Q. It's just can you start doing this?

24 A. Yes.

25 Q. Generally, how much lead time does the

1 DirectTV site manager give you before he wants the
2 installers to begin working six days per week?

3 A. Two to three weeks. Depends on what I
4 want. If I -- if I want my team to have an extra
5 weekend or I want -- I don't want to just dump it on
6 them, and, hey, next week you're on six days, so
7 whatever you had planned, stop. But generally it's
8 been two to three weeks.

9 As far as the end time, if I start seeing,
10 you know, gaps in our schedule, if I start seeing,
11 hey, you know, there's no need for us to be on six
12 days, I'll call that meeting and let them know what
13 I'm seeing. And then we'll -- again, at that point,
14 that's what I was telling you, periodically we'll
15 reassess it and we'll look at that time and be, like,
16 is this need still there.

17 Q. Once AIS decides that the installers will
18 move up to a six-day-per-week schedule, does AIS then
19 -- how does AIS relay that information to its
20 installers?

21 A. It's a two-part process, or actually
22 three-part process. Initially it's the supervisors
23 informing the technician, hey, we're going to be going
24 to six days pretty soon. Then formally a group e-mail
25 is sent to all the guys letting them know exactly what

1 date we're going to be going on six days. And if I
2 can, I'll have an all-employee meeting, and as a team
3 we'll discuss it, what it looks like in the
4 timelines.

5 Q. Are the installers given the choice whether
6 to remain at five days or move up to six days per
7 week?

8 A. Not really. When I say "not really," no.
9 If -- well, no, let me backtrack. That's not exactly
10 true. I do have some technicians that are on five
11 days. Right now I have a technician that's on five
12 days because he's had a -- he goes to see sometimes --
13 I don't really get into specifics with personal lives,
14 but he goes to see some type of -- I don't know if he
15 gets -- I don't know. He's got, like, six Thursdays
16 booked out that he's got to go see a chiropractor,
17 something like that, or acupuncture, something like
18 that. So he asked me, hey, can I stay on five, and I
19 have this thing going on, and so, yeah.

20 On a case by case basis, I will let
21 somebody stay on five days. Like I say, that decision
22 is mine because I really need the whole team to stay
23 on six days because that's when we make the most
24 money. So when we are given that opportunity, I jump
25 at it.

1 Q. So absent some type of medical reason, like
2 the individual you mentioned, generally the installers
3 are expected to work six days per week?

4 A. Yes. When I interview a candidate, and
5 we're still on a five-day rotation, I let them know
6 that eventually, you know, the workload will increase
7 and we will be going to six-day work week. So, yeah,
8 that expectation is laid out clearly.

9 Q. Who determines what days the installers
10 will work? So if they're working five or six days per
11 week, who determines what would be the off days?

12 A. I do. Generally, again, when I'm
13 interviewing a candidate, I let them know that we
14 generally work through the weekend. We're in the
15 customer service business, so we have to be home when
16 the customers are home. When do we have most access,
17 or when do we complete the most work is going to be on
18 the weekends.

19 So when we're on a five-day rotation
20 generally we have technicians have either a Tuesday/
21 Wednesday off or a Wednesday/Thursday off, but I do
22 have guys that have asked me to have Sundays off. And
23 I do -- currently on my staff, I have three
24 technicians that have Sundays off. And that's solely
25 at my discretion. Long-term employees, they ask me,

1 hey, I like to go to church on Sundays, whatnot, but
2 for the most part I expect everybody to work the
3 weekends.

4 Q. How many hours per day do the installers
5 typically work?

6 A. Honestly, that varies. I couldn't answer
7 that specifically. Some days a technician might be
8 off at one or 2:00. Some days the technician might be
9 off at four or 5:00. It solely depends on the
10 workload for that day.

11 Q. What time do installers start their shift?

12 A. I have two types of installers. I have
13 remote technicians and I have technicians that report
14 to the office. The technicians that report to the
15 office are supposed to be there at 7:00. Whether that
16 happens or not is another story. But they're supposed
17 to report to the office at 7:00, gather their
18 equipment, and be on the job site between 8 and 8:30.
19 Our remote technicians, they work straight from home,
20 report straight to the job site, and that's at between
21 8 and 8:30.

22 Q. How do you decide whether to have an
23 installer be a remote technician or one who has to
24 report to the office?

25 A. Most of the time it's a geographic

1 location. If I have a technician -- for example, I
2 have a technician that lives in Lake Stevens. My
3 offices are in Kent. So, it makes sense for us to
4 start that -- create that process of where he comes
5 down to the office maybe once a week to pick up
6 equipment for the week, and him just report straight
7 to the job site straight from his house or from his
8 home locale. But it's strictly geographic. There's
9 no -- it's strictly geographic.

10 Q. So on a shorter day, the installers, you
11 testified, will finish between one and two p.m.?

12 A. Sometimes noon. It depends.

13 Q. What does it depends on?

14 A. The workload for that day, what we got
15 issued and what's available.

16 Q. When installers first are hired by AIS, are
17 they given any kind of schedule as to how many hours
18 per week that they can expect to work?

19 A. They're given -- no, no. When I'm
20 interviewing somebody and we're going over the job, I
21 tell them exactly what I just told you as far as what
22 the days look like. I tell them how we monitor the
23 jobs. I tell them that their hours are monitored
24 heavily, and they're expected to account for all of
25 their hours.

1 They're told if they go over 40 hours there
2 is a -- which I've learned through my dealings with
3 the Department of Labor, there is an overtime rate
4 that we're supposed to apply, but as far as
5 specifically what to expect, I always give them a
6 generality. Report to the office at seven and
7 normally you're off between four and five. Whether
8 that turns into 12, one or two, but they're generally
9 told they're expected to be there at that time, those
10 times.

11 Q. Generally between 7 a.m. and 5 p.m.?

12 A. Four to five, something like that, yeah.

13 Q. Are there instances when installers will
14 work later than 5 p.m.?

15 A. Yes.

16 Q. What would cause that to happen?

17 A. Well, currently right now -- so there's --
18 we work with two time frames right now. Let me get --
19 so currently, typically throughout the year, we work
20 with either an AM or a PM appointment. AMs are eight
21 to 12. PMs are 12 to fours. But in the summertime,
22 in the summer months, there's a third time frame
23 opened up, which is called a four to eight. And
24 typically in the summer months, a technician may be
25 out later than four due to those four to eight

1 appointments.

2 Q. This 4 p.m. to 8 p.m. time frame, has this
3 been in place since AIS started?

4 A. Yes.

5 Q. For the summer months?

6 A. Yes.

7 Q. Was it also in place at Lumin?

8 A. Yes.

9 Q. During the summer, do installers have
10 4 p.m. to 8 p.m. appointments most days?

11 A. Yes.

12 Q. If an installer is working a five-day-per-
13 week schedule in the summer, are they doing 4 p.m. to
14 8 p.m. time appointments four of those days, four out
15 of five?

16 A. It's possible. The reason why I say it's
17 possible is because -- so we do see the four to eights
18 in the summer months. The AMs and the PMs are
19 predominantly part of the workload for most days, but
20 we'll see a portion of it be four to eights.

21 Technicians like to juggle their jobs
22 around also. They'll contact another technician and
23 they'll say, hey, can you take my four to eight. I
24 mean, as long as they get approval from one of our
25 supes to kind of move a job around like that, saying,

1 hey, I don't want this four to eight or whatever, they
2 can do things like that. But, I mean, your question,
3 five-day work week, four days, see you four to eight,
4 yeah, that is possible.

5 MR. LAKE: I think now would be a good time
6 for the first break.

7 MR. KELLY: Sure.

8 (Off the record from 10:30 to 10:45 a.m.)

9 Q. So, Mr. Martinez, how does AIS evaluate the
10 performance of its installers?

11 A. We do it through our QC process and we use
12 the metrics.

13 Q. Besides the information provided by
14 DirecTV, what other input goes into the evaluation of
15 installers, if anything?

16 MS. TRUONG: I'm just going to object as to
17 the use of the term "information provided by DirecTV"
18 as to vague. But you can answer if you understand.

19 A. We get e-mail from customers. You know,
20 like "atta boys."

21 Q. So AIS will directly hear from customers
22 sometimes?

23 A. Yes.

24 Q. When AIS installers go out to perform a
25 job, do the installers provide AIS's contact

1 information?

2 A. They shouldn't, but at times the technician
3 will.

4 Q. So when AIS customers -- or excuse me, when
5 the customers contact AIS, do you know how the
6 customers are getting the contact info for AIS?

7 A. Probably from the technician that knows
8 they did a good job, and they're getting a -- because
9 I'll get an e-mail and not know where it's from where,
10 but they'll refer to their latest installation.

11 Q. Does AIS or do you, as the president of
12 AIS, give much weight to those kind of communications
13 from customers?

14 A. I do, I do. If somebody has gone out of
15 their way to give me some positive feedback or
16 negative, I do.

17 Q. So there's the metric reporting from
18 DirecTV, and then occasionally direct communication
19 from customers to AIS. Is there anything else that
20 goes into AIS's performance evaluation of installers?

21 A. Yes. The QCs that I have the supervisors
22 do on the technician's installation.

23 Q. And I know we talked a little bit about
24 those earlier, but how frequently is a given installer
25 evaluated by a supervisor?

1 A. Monthly.

2 Q. So every month -- does that mean every
3 month the supervisor will accompany the installer on a
4 job, or will just give an overall evaluation?

5 A. They'll do a one-on-one with the
6 technician. A supervisor will choose whatever time is
7 convenient for him to do the one-on-one. And
8 basically they're going over the information that we
9 got back.

10 Q. How frequently do the supervisors accompany
11 an installer on a job?

12 A. Not frequently.

13 Q. Does AIS have any kind of policy that a
14 supervisor should accompany an installer every six
15 months or every year to see how they're doing on the
16 job?

17 A. No. We don't have a policy like that.

18 Q. And you also testified earlier that the
19 supervisors will sometimes do follow-up at the
20 customer's homes?

21 A. Yes.

22 Q. To evaluate the performance?

23 A. Uh-huh, yes.

24 Q. Does AIS have any policy about how often a
25 given installer should have that kind of follow-up

1 work done? At least once a year or --

2 A. No.

3 Q. Please review a document that will be
4 marked as Exhibit 7.

5 (Marked for identification Exhibit 7).

6 MR. KELLY: Several of the documents that
7 we used today did not include Bates numbers on the
8 bottom. Can you represent that Exhibit 7 was produced
9 in discovery in response to requests, Exhibit 6 was
10 produced in discovery in response to requests?

11 MR. LAKE: I'm not going to make any
12 representations on that on the record.

13 MR. KELLY: You think it's appropriate,
14 when we've asked for documents relating to your
15 allegations, that you do not produce them and then
16 surprise us with them in a deposition?

17 MR. LAKE: Well, I think it's inappropriate
18 to have this discussion during the deposition on the
19 record, first.

20 MR. KELLY: Well, since we are already in
21 deposition, and since you are surprising us with
22 documents that are not Bates stamped, other than
23 Exhibit 5, and since you asked for these documents in
24 discovery, I think it's highly appropriate.

25 MR. LAKE: Well, your objection is noted.

1 MR. KELLY: Well, I would like to get an
2 answer to the question for the record.

3 MR. LAKE: I'm going to choose to not
4 provide an answer because there is no need to do one.
5 This is a deposition of AIS. I'm not the person who
6 is going to be here answering questions today, but in
7 an appropriate forum I'd be happy to have that
8 discussion.

9 MR. KELLY: For the record, it is 10:51.
10 We've been at the deposition a couple hours now. Two
11 documents which we specifically asked for in discovery
12 were not produced, and we know what our rights are.

13 Q. Mr. Martinez, turning to Exhibit 7, have
14 you seen this document before?

15 A. Yes.

16 Q. What is your understanding of this
17 document?

18 A. It's an incentive program DirecTV has
19 created for their contracting partners in order to
20 achieve good post calls.

21 Q. So DirecTV is offering incentives if
22 installers perform well on the customer service?

23 A. Yes.

24 Q. What happens -- or excuse me. First, has
25 AIS received any of the incentives that have been

1 described in Exhibit 7?

2 A. Yes.

3 Q. What happens when that money is received by
4 AIS?

5 A. Do you mean what do we do with it?

6 Q. Correct.

7 A. It goes to our bank account.

8 Q. Does it -- does it go to the installer?

9 A. No, no. That money is the money of AIS.

10 Q. Okay. Now, the post call index that is
11 described in Exhibit 7, is it keyed to the performance
12 of individual installers or is it the performance of
13 AIS as a whole?

14 A. The performance of AIS as a whole.

15 Q. Okay. Now, do you know what goes into
16 determining the post call index?

17 A. Yes. It's part of the metrics that I told
18 you about. The post call index consists of ID badge,
19 technician clean up, equipment working properly. It's
20 whatever the customer reports back to to DirecTV.

21 Q. Towards the bottom of the page, under the
22 table for post call index, the next sentence reads,
23 "All other aspects of the incentive remain the same."
24 Do you see that?

25 A. Yes, I do.

1 Q. Do you know what this is referencing?
2 A. Actually, I don't.
3 Q. Were there other incentives that DirecTV
4 provided to AIS besides this post call index?
5 A. No.
6 Q. At any time?
7 A. No.
8 Q. What about when you were at Lumin? Can you
9 think of other incentives beside the post call index?
10 A. No.
11 Q. When AIS would receive the -- any money
12 through this incentive, the post call index, would AIS
13 provide any kind of bonus or anything to installers
14 for their performance?
15 A. Typically, no.
16 Q. In general, does AIS provide any kind of
17 incentives for its installers? Any kind of bonuses?
18 Anything like that?
19 A. Once in a while we'll develop an incentive
20 program where we include the post call index, and if a
21 technician individually achieves a certain mark, we
22 will bonus him or her out a certain percentage of
23 monies.
24 Q. And when you say they hit a certain mark,
25 what do you mean by that?

1 A. Above 96 percent.

2 Q. So it's based on the information from
3 DirecTV?

4 A. Yes.

5 Q. What kind of range could this bonus be as
6 far as how much?

7 A. It's a good Lisa question, but in general
8 two to three dollars per good call.

9 Q. And what do you mean by "good call"?

10 A. Anything above 96 percent.

11 Q. So is AIS given data on the performance of
12 an installer on each call?

13 A. No. Not consistently, no.

14 Q. What do you mean when you say "Not
15 consistently?" Is AIS sometimes given data by DirecTV
16 on installers on each call?

17 A. On each specific call, no, but we can dig
18 for the information through -- let me go back. I'm
19 trying to give you a good answer as far as
20 specifically how this works. Individually, good
21 calls, no. But if a technician has got a score of 96
22 or above, I know how many post calls have been done on
23 a certain technician, so that's how I know how many.
24 I'll assume all those calls got him the 96.

25 Q. So, you're saying that if a technician

1 scores above a 96 over a given time period that most
2 of the calls, or, excuse me, essentially all of the
3 calls had to be good calls?

4 A. Yes. So they'll get like two or three
5 dollars for each good call, yes.

6 Q. And what kind of a time period are we
7 talking about? Like is this for a pay period?

8 A. Monthly. I'm sorry. Monthly.

9 Q. So does AIS provide bonuses on a monthly
10 basis?

11 A. Currently, yes.

12 Q. When you say "currently," is this a
13 relatively new program?

14 A. The current program, yes.

15 Q. When did it -- when did this current
16 program begin to be instituted?

17 A. January of 2014.

18 Q. Prior to January of 2014, what was the
19 bonus program, if any, at AIS?

20 A. It was -- we used the post call, what we
21 just described. That's it.

22 Q. Was it less frequent than monthly?

23 A. No.

24 Q. What I'm trying to find out is -- you said
25 that AIS has instituted a program in January. So what

1 was -- what was new about this program that you're
2 describing in January as opposed to before January?

3 A. Basically the new program takes all the
4 metrics into consideration, whereas the old one I just
5 looked at post calls.

6 Q. When you say "all the metrics" you're
7 referring to the metrics we discussed earlier?

8 A. Yes.

9 Q. And when AIS is paying bonuses or
10 incentives to installers, where does that money come
11 from to pay those?

12 A. Where does it come from?

13 Q. (Nodding head). Is it money that comes --
14 that has come from DirectTV through its incentive
15 program or is this money that comes from AIS?

16 A. It's straight from AIS.

17 MR. LAKE: Mr. Martinez, I'll next give you
18 a document that will be marked as Exhibit 8.

19 (Marked for identification Exhibit 8.)

20 Q. And Mr. Martinez, these are AIS's responses
21 to requests for admission from the Department of
22 Labor. Specifically I'd like you to turn to page 7,
23 requests for admission No. 20. Do you see that?

24 A. Yes.

25 Q. Do you see the "X" and then the word

1 "Deny," and then a couple of sentences after that,
2 about in the middle of the page, starting with "AIS
3 began receiving" --

4 A. Yes.

5 Q. -- "a monthly bonus based off the average
6 for all of our technicians for this metric from
7 DirecTV in January 2011." Do you see that?

8 A. Yes.

9 Q. So was it in January 2011 that AIS first
10 started receiving incentives for the post call index?

11 A. It's possible. I don't know.

12 Q. Did you have any role in preparing these
13 responses?

14 A. These responses?

15 Q. Yes.

16 A. Were these the question and answer kits
17 that we were given?

18 Q. These are requests for admission from the
19 Department of Labor where we ask AIS to either admit
20 or deny certain factual assertions.

21 A. Well, then, yes, I definitely was involved.

22 Q. Okay. So turning back to the response to
23 No. 20, which states that AIS began receiving a
24 monthly bonus in January 2011 based on the post call
25 index, do you know where that information, that

1 January 2011 date, could have come from if you don't
2 know it?

3 A. We probably were looking at referencing
4 some documents that we had to verify that.

5 Q. So, when you started AIS, was AIS receiving
6 any kind of incentives from DirectTV?

7 A. No.

8 Q. When you were at Lumin, was AIS receiving
9 any kind of incentives from DirectTV?

10 A. Not that I can remember.

11 Q. So this post call index, as to your memory,
12 is the first incentives that was received?

13 A. Yes.

14 Q. Turning to the next sentence, "AIS has
15 offered different incentives programs for our
16 technicians based on several metrics including the
17 post call index." Can you describe what these
18 different incentives programs are? I know we've
19 talked about some, but is there anything else? Any
20 other information you can provide?

21 A. The protection plan. If a technician
22 offers a customer a protection plan, not an exact
23 number, but I believe we paid technicians two dollars
24 for every protection plan. That's an incentive that
25 they had to do that.

1 Q. And why does AIS specifically offer this
2 incentive for protection plans?

3 A. It's part of the expectation.

4 Q. And why is that? What is the protection
5 plan?

6 A. It's a -- it's like a warranty for the
7 customer offered by DirecTV.

8 Q. Why is it part of the installers'
9 expectations that they complete -- or that they sell
10 protection plans?

11 A. Because it's a DirecTV requirement.

12 Q. What do you mean by that?

13 A. They ask us to offer the protection plan at
14 every single appointment that we visit.

15 Q. Does DirecTV offer any incentives to AIS to
16 sell protection plans?

17 A. Yes.

18 Q. How much per protection plan?

19 A. I believe we get four dollars.

20 Q. Currently?

21 A. Yes.

22 Q. Do you recall that number changing any time
23 in recently or --

24 A. No, I don't.

25 Q. Besides the protection plan, are there any

1 other incentives programs that AIS has offered to its
2 technicians?

3 A. No.

4 Q. You can set aside Exhibit 8 for now. So
5 does DirecTV -- if DirecTV receives negative feedback
6 about the work that's being done by AIS, does that
7 information get passed on to AIS?

8 A. Yes.

9 Q. And what does AIS do when it receives
10 negative customer feedback about an installer?

11 A. We mentor -- we sit down with the
12 technician and mentor them.

13 Q. I know we talked about this a little bit
14 earlier. Has AIS fired an installer based on negative
15 feedback from DirecTV customers?

16 A. I can't give you an exact, but my initial
17 answer would be yes.

18 Q. Has DirecTV otherwise disciplined an
19 installer based on negative feedback received from
20 DirecTV customers?

21 MR. KELLY: Vague and ambiguous as to
22 "discipline." Calls for a legal conclusion. You can
23 answer.

24 A. DirecTV has no involvement with any of my
25 technicians.

1 Q. Right. My question, though, was has AIS
2 disciplined any installer based on feedback received
3 from DirecTV customers?

4 MR. KELLY: Objection. It's a technical
5 one, counsel. That wasn't your prior question, so
6 whichever one you want answered, but the question is
7 different.

8 Q. My question to you is the one I just said.
9 Has AIS disciplined installers short of termination
10 for -- based on the feedback received from DirecTV
11 customers?

12 A. Yes.

13 Q. And what sort of measures -- short of
14 termination, what sort of disciplinary measures has
15 AIS taken?

16 A. Like I said before, we're a small company,
17 so nothing is super black and white, but we've -- any
18 feedback we've gotten from DirecTV customers, be it
19 positive or negative, always gets a one-on-one with
20 either me or the supervisors. We are constantly
21 mentoring the technicians, but there's no official
22 write-up or things of that nature.

23 Q. I think you had testified earlier that
24 there are -- suspensions is one disciplinary measure.
25 Can you recall any instances where AIS has suspended

1 an installer?

2 A. Specifically, no. But I know that in the
3 past we may have put somebody on, like, a two-day
4 suspension or whatnot.

5 Q. Do you recall what they were suspended for?

6 A. No.

7 Q. Mr. Martinez, I'll have you look back at
8 Exhibit 4, I believe. It's the contract between Lumin
9 and DirecTV. Excuse me, Exhibit 5. And if you could
10 turn back to page 26. There's a sentence in
11 approximately the middle of the page on DTV 26.
12 "DirecTV, in its sole discretion, and upon notice to
13 contractor, may terminate the subcontractor status of
14 any such third party or subcontractor, and contractor
15 may not engage or otherwise utilize such third party
16 or subcontractor in the performance of services as set
17 forth herein unless and until DirecTV, in writing,
18 reinstates such third party or subcontractor as a
19 subcontractor, if ever."

20 Do you see that sentence I'm reading?

21 A. No. Actually, in the event --

22 Q. So, it's the paragraph under
23 "Subcontractors," and it's towards the bottom of that
24 paragraph. The sentence begins on the right side.
25 The previous sentence states, "In addition each

1 subcontractor shall be identified"?

2 A. I got it.

3 Q. So I'm looking at the follow-ups on DirecTV
4 -- regarding DirecTV's authority to terminate.

5 A. Okay.

6 Q. Do you see that sentence?

7 A. Yes.

8 Q. Are you aware if the contract between AIS
9 and DirecTV has any similar such provision?

10 A. No. I'd have to look at it.

11 Q. Is it your understanding that DirecTV has
12 the right to terminate an AIS installer?

13 A. One of AIS's? No, I don't think they have
14 that right.

15 Q. Is it your understanding that DirecTV has
16 the right to tell AIS they do not want a given
17 installer to perform work orders any more for DirecTV?

18 A. They may have customer service issues or
19 concerns, or they may -- when I say "they" I mean
20 DirecTV. DirecTV may have concerns on the general
21 workmanship of a certain technician. So, yes. So
22 they -- if they have concerns over the quality of the
23 work being installed or, you know, constant complaints
24 from customers over a specific technician, then yes.

25 Q. And has DirecTV come to you with

1 circumstances like the one you just described?

2 A. Very rarely. To the point where I can't
3 even remember the last time they did that.

4 Q. But do you recall that it has happened?

5 A. Yes.

6 Q. In the circumstances and the situations
7 that you're describing, has DirecTV asked AIS not to
8 give an installer, who has been having frequent
9 complaints, any more work orders from DirecTV?

10 A. No.

11 Q. Have there been any circumstances where
12 DirecTV has said to AIS that they don't want an
13 installer performing work orders for DirecTV?

14 A. Yes.

15 Q. What were the circumstances of that?

16 A. Similar to what we had just discussed. A
17 technician -- and I can't give you specifics, but I
18 recall a time where a technician had some serious
19 quality issues. They had serious workmanship and
20 craftsman issues, and they were causing damage to, you
21 know, the system, whatnot. At that point we've had
22 conversations where they informed me if this continues
23 they will no longer issue work to a certain tech
24 number unless something changes.

25 Q. And do you recall how that situation

1 resolved?

2 A. Most of the time, once it gets to that
3 point, I quickly turn the technician around.

4 Q. Has this happened more than once that
5 DirecTV has made such --

6 A. Yes.

7 Q. Has it happened at least once a year?

8 A. No.

9 Q. In any circumstances where DirecTV has
10 noted their concerns with a specific installer
11 performing work orders, has AIS subsequently taken any
12 disciplinary measures?

13 A. Initially, no. We do our own homework and
14 we investigate whatever is being reported. From there
15 I make the decision on how to proceed.

16 Q. Has DirecTV's concerns with a specific
17 installer led to an installer eventually being
18 terminated by AIS?

19 A. No. No. I honestly -- we don't fire a
20 lot. We're a small company and we work really hard
21 to grow the foundation and make it work.

22 Q. Has anyone with DirecTV ever suggested or
23 implied to AIS that it wanted AIS to terminate a
24 specific installer?

25 A. No.

1 Q. And what about when you were at Lumin? Did
2 DirecTV ever ask Lumin not to give an installer any
3 more work orders?

4 A. So we're talking in 2008, 2009?

5 Q. To 2010.

6 A. Right. Excuse me, 2010. No. It's pretty
7 much operated similar to what we just talked about.

8 Q. So, more generally, installers perform work
9 orders for DirecTV customers; correct?

10 A. Yes.

11 Q. And these work orders come from DirecTV?

12 A. Yes.

13 Q. DirecTV's computers assign, initially
14 assign, an installer to a given work order?

15 A. Yes.

16 Q. Do you know what factors are considered by
17 DirecTV before they assign a work order to a specific
18 installer?

19 A. I know it's a computer assigning the work,
20 and I know that the factors involved would be any
21 information that we've given them to input into the
22 computer, i.e., skill set. If I think a technician
23 can only do so much work I'll let them know I only
24 want them pulling work from eight to three. Or if I
25 think a technician has progressed and can do more

1 work, I'll open up a range.

2 Q. What do you mean when you say that you'd
3 only have the installer pulling work from eight to
4 three. Are you talking about 8 a.m. to 3 p.m.?

5 A. Yes.

6 Q. And why would that be?

7 A. Inexperience. A new technician that I've
8 just trained and launched can only handle so much
9 work.

10 Q. So you want to -- well, let me take a step
11 back. What hours do you typically work at AIS?

12 A. My hours?

13 Q. Yes.

14 A. Well, that's -- it varies. Like what time
15 does my day start?

16 Q. Yes. You know, what's -- in a typical day
17 how many hours do you work? When do you start? When
18 do you finish?

19 A. Well, there's an official start and stop
20 time and an unofficial start and stop time. In this
21 day and age, I'm constantly working via e-mails,
22 iPhones, iPads, and things of that nature. But
23 typically I'm up 6:30, seven, kind of looking over
24 what e-mails have come in and what the workload is
25 looking like, how many jobs we have that day.

1 From there I -- you know, I have a morning
2 routine, do my thing. Report to the office. That can
3 vary between eight and 9:00. From there I'm at the
4 office throughout the day. I don't leave the office,
5 and I'm, at times, in the field also doing other
6 things, QC'g myself. I involve myself in all aspects
7 of the business. Or I may have a meeting here or a
8 meeting there.

9 My schedule is constantly changing. I
10 don't have an official one, but typically, you know,
11 the day starts, like, 7:00. I'm going over at six,
12 7:00. And at times it can vary. Sometimes I'll play
13 hooky. Sometimes I'll, you know, work until seven.

14 Q. So with the inexperienced installers, do
15 you want them working in the daytime because you know
16 there will be more supervision?

17 A. Exactly. And I will want to limit the
18 amount of work that they get. My goal, when we first
19 launch a technician, is not to overwhelm them. So we
20 limit the amount of -- we limit their workload. And I
21 will only assign one, maybe two jobs to somebody we
22 just launched.

23 MR. KELLY: Excuse me. Off the record for
24 a second.

25 (Off the record from 11:19 to 11:20 a.m.)

1 (Record read as requested.)

2 Q. Besides the information on the time -- the
3 times that you want installers to work, what other
4 information does AIS provide to DirecTV about its
5 installers?

6 A. That's it.

7 Q. So can you think of any other factors that
8 go into how DirecTV assigns work orders to installers,
9 or are you aware of any?

10 A. I tell them exactly where I want them to
11 start. I'll give them a starting ZIP Code.

12 Q. Okay. For the installer?

13 A. Yes. Where I want the technician to pull
14 the jobs from.

15 Q. Now, once DirecTV, or excuse me, once AIS
16 receives the work orders from DirecTV, what is the
17 process by which those work orders are given to
18 installers to be completed? What's AIS's process from
19 there?

20 A. Once the work is issued supervisors will
21 take a look at -- they'll use what's called Click,
22 Click software. Click is a program used to not only
23 see what work we have for the day, but like I told you
24 before, to track the progress of the technicians. It
25 gives us the ability to manipulate the jobs and move

1 jobs around from technician A, B or C. So the
2 supervisors in the morning will look at that, will
3 look at Click, see what we have, see where everybody
4 is located, and make the necessary changes that they
5 deem necessary in the mornings to adjust for who can
6 handle what.

7 Q. How often do AIS's supervisors make changes
8 to the assignments brought in from DirecTV?

9 A. Daily. Every single morning.

10 Q. For each installer or --

11 A. They look at each and every installer, yes.

12 Q. So typically what percentage of DirecTV
13 work orders are reassigned by AIS supervisors? Most?

14 A. A lot. A lot. Every day factors -- the
15 big factors are when we have somebody that calls in
16 sick. If we have multiple call-ins that's a big day
17 where we have to just completely rearrange the whole
18 workload for that day and load somebody up that we
19 know can handle it, unload somebody that can't.
20 Monitor progress throughout the day and just,
21 throughout the day, assign work orders also. So, it
22 does happen daily and throughout the day.

23 Q. Now, when the installers report for work in
24 the morning, for the ones who do go to the shop, what
25 are they supposed to do once they get to the shop?

1 A. Once they report to the offices, they
2 perform a variety of duties or functions. Everybody,
3 you know, operates differently. Some will work on
4 their billing/time sheets. Finish filling something
5 out. Some will immediately go to the warehouse bench
6 and request whatever materials they need for that day.
7 Some like to sit down and go over their work orders
8 slowly and write down on a pen and pad what they're
9 going to need.

10 But typically, what they're supposed to be
11 -- what they're supposed to be doing is just getting
12 ready for the day. Restocking their vehicles with
13 small parts that they may need. Putting in vacation
14 requests. General office type of duties.

15 Q. The installers are then supposed to be out
16 at their first job? Or let me rephrase. How long are
17 the installers supposed to be at the offices before
18 they head out to their first job?

19 A. Typically what we want to see is we want to
20 see a technician report at seven and be out in the
21 field -- go into the first job by at least 7:40, 7:45.
22 That's what I want. Whether that happens or not is
23 something else.

24 Q. Well, when that doesn't happen, does AIS do
25 anything to work with the installers to get them out

1 of the office earlier?

2 A. Yes, yes. We get a little more aggressive.
3 We kind of herd the team, you know. Stop from
4 lollygagging, talking, hanging out. Yes. We like to
5 see everybody on the job site between eight and 8:30.

6 Q. When the installers are getting the
7 equipment for the day, what sort of equipment are we
8 talking about?

9 A. Receivers, high definition receivers or
10 standard digital receivers. The actual satellite dish
11 that we will be installing on the home and small parts
12 needed to do that, i.e., cable fittings that go at the
13 end of the cable. Ground blocks. Just all the small
14 parts needed to perform the installation.

15 Q. The receivers come from DirecTV?

16 A. Yes.

17 Q. The satellite dish comes from DirecTV?

18 A. Yes.

19 Q. Who provides the cable and the other small
20 parts that you're talking about?

21 A. AIS does.

22 Q. Do the installers pay for this?

23 A. No.

24 Q. Have the installers ever paid for
25 equipment?

1 A. Probably back in 2008, when they were 1099
2 subs.

3 Q. So at Lumin?

4 A. Possibly. I wasn't there.

5 Q. Okay. Let me rephrase. At AIS have
6 installers ever paid for equipment?

7 A. Never.

8 Q. What about tools? What kind of -- who pays
9 for the tools that the installers uses during their
10 day?

11 A. AIS does.

12 Q. What sorts of tools are the installers
13 using on a day-to-day basis?

14 A. Satellite meters that measure the signal
15 strength. Coaxial cable crimpers. Coaxial cable
16 strippers. That's what they're called. Cable
17 mappers. A cable mapper helps find the cable. Cable
18 reels to carry the cable in. If a candidate does not
19 have a drill set we will provide them a drill set.
20 Ladders, uniforms.

21 Q. The uniforms, are they paid for by AIS?

22 A. Yes.

23 Q. Why does AIS have its installers wear
24 uniforms?

25 A. It's a requirement. It's an expectation

1 for us to wear the uniform we're supposed to wear.

2 Q. Requirement from DirecTV?

3 A. Yes.

4 Q. And what does the uniform look like?

5 A. It's a blue DirecTV shirt.

6 Q. And does it say anything on it besides
7 DirecTV?

8 A. No.

9 Q. I assume it's a DirecTV logo?

10 A. Yes.

11 Q. The vehicles the installers are working in,
12 whose vehicles are they?

13 A. Theirs.

14 Q. The installers' vehicles?

15 A. Yes.

16 Q. Who pays for the gas that the installers
17 use during their day?

18 A. They do.

19 Q. And does AIS reimburse them at all for gas?

20 A. No.

21 Q. What about for mileage?

22 A. No. Now, I do have a new program where I
23 couldn't give you a specific percentage of the staff,
24 but we launched it, I believe, a year ago where we do
25 pay a percentage -- it's called a per diem -- of the

1 fuel consumption candidates use while on the job. Not
2 to and from work, but while they're on the job.

3 Q. Why did you start that program?

4 A. It's a retention. We're testing it out,
5 seeing, you know, what works.

6 Q. And approximately how long ago did you
7 start that program to pay the percentage of the gas?

8 A. Possibly a year and a half ago.

9 Q. What percentage of the gas does AIS pay
10 under this program?

11 A. A good percentage. I'm sorry. Lisa would
12 know the answer better than I do.

13 Q. Does -- has AIS offset any other
14 compensation to the installers to make up for what
15 it's now paying in gas?

16 A. Can you say that again?

17 Q. Has AIS offset any other compensation to
18 installers to -- or excuse me. Has AIS reduced any
19 other compensation to installers to offset the
20 additional gas expenses?

21 A. Oh, right. Yes. They work on an adjusted
22 rate card, yes.

23 Q. Do most of the installers take advantage of
24 this gas percentage payment?

25 A. I wouldn't know.

1 Q. The vehicles that are being used by the
2 installers, do they have any signage on them?

3 A. A DirecTV authorized contractor magnet.

4 Q. Is that something the installers pay for or
5 does AIS pay for it?

6 A. AIS does.

7 Q. Does AIS have vehicles that installers
8 could use if they didn't want to use their own
9 vehicle?

10 A. We do have some spare vehicles. It's
11 limited, and we use them to help out the guys if they
12 have vehicle issues or whatnot. So they don't lose
13 any work time, we let them use some of our spare
14 vehicles.

15 Q. So they're there more as a backup?

16 A. Yes.

17 Q. How are AIS installers paid?

18 A. Biweekly.

19 Q. And on a daily basis, are they paid a piece
20 rate?

21 A. Yes.

22 Q. Who determines the piece rate, what the
23 installer will be paid for a specific task?

24 A. AIS does.

25 Q. And who at AIS makes that determination?

1 A. I do.

2 Q. In consultation with anyone?

3 A. Lisa.

4 Q. Have AIS installers always been paid a
5 piece rate?

6 A. Yes.

7 Q. When you were at Lumin, were installers
8 also paid a piece rate?

9 A. Yes.

10 Q. Please review a document that will be
11 marked as Exhibit 9, Mr. Martinez.

12 Have you seen these documents before?

13 (Marked for identification Exhibit 9.)

14 A. Yes.

15 Q. What is your understanding of what these
16 documents are?

17 A. These are the pay scales or the rate cards
18 we pay our technicians for completing certain duties
19 or assigned work orders.

20 Q. Now, these documents in Exhibit 9 have
21 different dates on them when they became effective.
22 Approximately how often does AIS change its pay scale?

23 A. It's a good question. AIS currently does
24 not change its pay scale often if at all. When you
25 see a -- and especially today, the changes that are

1 made are just additions to new requirements. The
2 reason why you see big changes from 2008 to 2012 and
3 '14, was a transition from that 1099 to the W-2 model.

4 Moreover, this is us figuring it out,
5 seeing what we can do to operate as a business with
6 the expectations of paying new agencies and that whole
7 transition.

8 Q. Okay. I guess the first three pages relate
9 to the pay scale at All Nations Communications, which
10 is the business name for Lumin. Did you have any
11 input on that pay scale?

12 A. The latter ones, yes.

13 Q. The pay scale has different columns for
14 level 1 and for level 2 installers. Do you know, what
15 was the difference between a level 1 or a level 2
16 installer?

17 A. I believe it was seniority.

18 Q. Do you recall approximately how many -- how
19 long an installer had to be with Lumin to move up to
20 level 2?

21 A. No.

22 Q. Looking at the last two pages in Exhibit 9,
23 the second to last, which is Bates stamped 001394,
24 entitled "Employee Pay Scale," and then the last page
25 of Exhibit 9 Bates stamped 001395 is entitled

1 "Contractor Pay Scale." Do you see that?

2 A. Yes.

3 Q. Does AIS have contractors?

4 A. No.

5 Q. Did AIS have contractors on May 23 of 2012?

6 A. I believe we had one, yes.

7 Q. How were the contractors' duties -- was the
8 contractor an installer?

9 A. Yes.

10 Q. How was that contractor installer's duties
11 different than the employee installers?

12 A. You know, it was a bad experience. The
13 contractor had free rein. We knew the rules very well
14 at that point. Come and go as he pleased. He worked
15 as a retailer, did other things in other places. The
16 installations and the standards were the same, but as
17 far as the reporting structure he only spoke to one
18 person. Me. That's it.

19 Q. Why was the contractor rates higher than
20 the installer rate, or excuse me, than the employee
21 rates?

22 A. Contractor was classified as a 1099. Our
23 employees are classified as W-2.

24 Q. But how does that explain why contractors
25 were being paid more for the same task than an

1 employee?

2 A. Contractors have essentially their own
3 businesses. They have their own licenses, insurance.
4 We don't have to worry about damage. We don't have to
5 pay certain taxes with a 1099, so we have the ability
6 to pay a contractor more for that.

7 Q. How does AIS determine what to pay for a
8 given task?

9 A. Well, we have our own rate card with
10 DirecTV that pays us specific amounts for specific
11 tasks. And we take that rate card and we decide what
12 percentage we can afford to pay our technicians.

13 Q. Is it a set percentage that AIS applies to
14 each task or --

15 A. Yes.

16 Q. What is that percentage?

17 A. I wouldn't be able to give you an exact
18 percentage, but I know that this is the set rate card.
19 I mean, we've been through this a couple times, and
20 this is the one that works for us as a business.

21 Q. So has the pay scale changed since May of
22 2012?

23 A. I couldn't give you a definitive yes or no,
24 but if -- I'd say right now, no.

25 Q. Now, earlier you were talking about this

1 gas program where AIS now pays a percentage of the
2 gas, and that AIS changed the rate, the pay scale, to
3 cover the gas?

4 A. Yeah. Actually, you know what? You're
5 right. The employees that do participate in the gas
6 program work under an adjusted rate card where -- and
7 I can't give you an exact number, but where here it
8 says basic and triple dish installation pays 50, on
9 their adjusted rate card it may pay 48.

10 Q. Does AIS do any analysis of how long a
11 given task should take before determining how much
12 installers will be paid for that task?

13 A. No.

14 Q. Now, why, to your knowledge, did All
15 Nations or Lumin change its pay scales?

16 A. To my knowledge, they were transitioning
17 from that 1099 model to the W-2 model and were
18 inexperienced and didn't know exactly what to do.

19 Q. And in your role as the vice-president of
20 Lumin/All Nations Communications, did you have input
21 into adjusting the rate -- the pay scale?

22 A. I did have input, but Mike solely ran the
23 show as far as Lumin is concerned. But I did have
24 input.

25 Q. Now, looking at the pay scale for

1 installers, starting with the first page of Exhibit 1,
2 or excuse me, Exhibit 9, to the last page of Exhibit
3 9, it appears that the pay has decreased over time.
4 Do you know why that is?

5 A. The same, the same reason. It's the
6 transition from 1099 to W-2. So changes need to be
7 made to support the business model in order to make
8 sure it's somewhat profitable.

9 Q. Has DirecTV also reduced the amounts it
10 pays for the same tasks over the last several years?

11 A. Yes.

12 Q. Do you know why?

13 A. On one of them, changes in work required.

14 Q. Can you elaborate a little more on what you
15 mean by that?

16 A. The installation got easier.

17 Q. So is the expectation, then, the work will
18 be completed faster?

19 A. I believe so.

20 Q. When DirecTV changes the rate that they
21 will pay to AIS for a task, is AIS given an
22 explanation for that change?

23 A. Yes.

24 Q. Is that a conversation or something in
25 writing? How does that --

1 A. I believe it's an e-mail letting us know
2 where they're going with something.

3 Q. When DirecTV has changed the rates has --
4 can you recall DirecTV ever increasing the rate paid
5 for a task?

6 A. No.

7 Q. Has AIS ever increased the rate it pays for
8 a task?

9 A. Yes. I believe we've played around with
10 the Wi-Fi Deca unit and the broadband Deca unit. The
11 bottom, the bottom from the third.

12 Q. So it currently -- excuse me. According to
13 the employee pay scale from May of 2012, the broadband
14 Deca unit was worth \$8 -- excuse me. It was --
15 installer was to be paid \$8 for that. The Wi-Fi Deca
16 unit was \$4. So is it your testimony that that amount
17 has increased since then?

18 A. You know, I couldn't say for sure.

19 Q. So other than the broadband and Wi-Fi
20 charges, can you think of any other examples where AIS
21 has increased the rate it pays for a given task?

22 A. No.

23 Q. When DirecTV proposes a change to the
24 rates, is there any -- has AIS ever resisted the
25 changes? Ever stated that it didn't agree with it or

1 wanted -- didn't want the change to go through?

2 A. No.

3 Q. When DirectTV presents a change in rates, do
4 you believe that it's an amount that is up for
5 discussion with AIS?

6 A. No.

7 Q. There are charge backs with DirectTV;
8 correct?

9 A. Yes.

10 Q. Can you describe what the charge backs are?

11 A. Charge backs, basically, we are supposed to
12 guarantee our work for 90 days. If DirectTV has to
13 send any of their service technicians out to one of
14 our jobs within that 90-day period the company gets
15 charged back.

16 Q. For any reason?

17 A. For any reason.

18 Q. How much is AIS charged?

19 A. Again, Lisa will give you an exact number,
20 but I believe it was \$50.

21 Q. Have the charge backs, that charge back
22 provision, has that been in place the whole time that
23 AIS has been in business?

24 A. Yes.

25 Q. Was it also in place at Lumin?

1 A. Yes.

2 Q. Beside the 90-day guarantee charge back,
3 can you think of any other charge backs that DirecTV
4 imposes on AIS?

5 A. Damage claims.

6 Q. What sort of damage claims?

7 A. If a technician goes out to a customer's
8 residence and creates any kind of damage, a customer
9 reports said damage, and it's one of our technicians
10 that created the damage, we're on the hook to repair
11 the damage.

12 Q. Whatever the cost?

13 A. We're allowed to find our own vendors or
14 contractor to -- we're allowed to manage that process.
15 So they don't ram anything down our throats as far as,
16 well, the customer said it's going to cost X to fix so
17 now you got to pay it. We're given the opportunity to
18 find our own method to repair what's -- what is said
19 being damaged.

20 Q. But it's AIS's responsibility to make the
21 repairs?

22 A. Yeah.

23 Q. And pay whatever cost it takes to make the
24 repairs?

25 A. Yes.

1 Q. Does AIS have the opportunity, with either
2 the damage claims or the 90-day guarantee, to respond
3 to DirectTV and say that they -- that AIS doesn't agree
4 with it?

5 A. Yes.

6 Q. And has that happened?

7 A. Yes.

8 Q. And what has come of those discussions?

9 A. They're pretty frequent. It's a two-part
10 question. The first part, specifically with a 90-day
11 guarantee on the service calls, if we get charged back
12 for faulty equipment, in our estimation that's through
13 no fault of our own, and we're able to do what's
14 called dispute. We have a dispute process where we're
15 -- we dispute certain charge backs where we deem not
16 valid.

17 And there's a process for that where one of
18 my -- the girl, the employee, you know, goes through
19 the charge backs and we dispute. It's a job. We
20 dispute a lot.

21 Q. Really?

22 A. Yes. And with the damage claims, if we go
23 out to set some customer claiming a damage, and we
24 think that we're not at fault we deny the claim.

25 Q. You deny it to DirectTV?

1 A. Yes.

2 Q. And is there a similar dispute process like
3 with the 90-day guarantee?

4 A. No. This one, they have their own
5 division, and it's two different departments, I'm
6 assuming. But the damage claim department will
7 receive a damage claim via e-mail letting us know
8 what's going on, and we'll be given the opportunity to
9 go and investigate ourselves, interview the customer,
10 take pictures, and determine whether we are at fault
11 or not.

12 Q. Have you -- has AIS denied a claim?

13 A. Oh, yes.

14 Q. What happens when AIS denies the claim
15 then?

16 A. I believe -- I don't know exactly what
17 DirecTV's processes are, but I believe they take it
18 back to the customer and saying -- you know, they're
19 saying no or whatnot. And I don't know what happens,
20 maybe a customer pushes back, and DirecTV comes back
21 and says, well, listen, this is not going away. This
22 is what it looks like. This is the customer saying
23 they're going to enter legal action or whatnot.

24 At that point, I let the insurance company
25 handle it. I'm like, well, I still disagree. And

1 there are times I agree. I said, yeah, you're right.
2 We're on the hook. Let's get this fixed. But when it
3 starts getting icky I let the insurance company handle
4 it.

5 Q. Who is the insurance company?

6 A. My insurance company.

7 Q. And do you know what has happened in the
8 instances where your insurance company has had to get
9 involved?

10 A. No.

11 Q. The insurance company resolves it one way
12 or the other?

13 A. Yes.

14 Q. As to the 90-day guarantee charge back, you
15 said that that comes up frequently?

16 A. Our dispute?

17 Q. Yeah.

18 A. Yes.

19 Q. How often is AIS given a 90-day charge back
20 from DirecTV? Is it every month?

21 A. Weekly.

22 Q. Weekly?

23 A. Yes.

24 Q. More than once a week on average?

25 A. Several times a week.

1 Q. What percentage does AIS dispute?
2 A. I couldn't give you that number.
3 Q. Would you say most of them?
4 A. No.
5 Q. So once it goes through the dispute process
6 you've described, ultimately who makes the decision
7 whether or not AIS will be charged for the charge
8 back?
9 A. DirecTV.
10 Q. And with the damage claim, when you've had
11 to get the insurance company involved, has there been
12 any instance where DirecTV has said that AIS is no
13 longer responsible for a damage claim?
14 A. No.
15 Q. Beside the damage claims and the 90-day
16 guarantee, are there other charge backs?
17 A. No.
18 Q. When AIS has to pay for one of the charge
19 backs, does AIS penalize or take any disciplinary
20 steps against the installer who is responsible for it?
21 A. No.
22 Q. So the amount doesn't come out of their
23 pay?
24 A. No.
25 Q. Does it affect their performance?

1 A. Well, I mean, if we get a multitude of
2 charge backs from an employee they'll definitely be
3 mentored and up trained, yes.

4 Q. Have there been instances where a specific
5 installer has had problems with multiple charge backs,
6 either for the 90-day guarantee or the damage claims?

7 A. Yes.

8 Q. And in none of those instances has the pay
9 been docked at all for the installer?

10 A. Never. We run a tight ship and the
11 employee's paychecks are their paychecks.

12 Q. Over the years has this charge back program
13 -- have there been other charge backs?

14 A. From DirecTV?

15 Q. Right.

16 A. No.

17 MR. LAKE: Mr. Martinez, I'll have you look
18 at a document to be marked as Exhibit 10.

19 (Marked for identification Exhibit 10.)

20 MR. KELLY: Counsel, do you have a better
21 copy, perhaps?

22 MR. LAKE: I do not. The questions are
23 going to concern some of the parts that are plainly
24 visible.

25 MR. KELLY: Give me a second.

1 Q. Have you had a chance to look over the
2 documents in Exhibit 10?

3 A. Yes.

4 Q. Do you recognize what these documents are?

5 A. They are billing sheets.

6 Q. From Lumin?

7 A. It looks like it, yes.

8 Q. Mr. Martinez, at the bottom of the document
9 are handwritten deductions for supplies every week on
10 these pay sheets?

11 A. Uh-huh.

12 Q. Do you see that?

13 A. Yes. I'm sorry, yes.

14 MR. KELLY: Excuse me. I'm sorry, can you
15 just say again where you're looking? Are you on the
16 first page?

17 MR. LAKE: I said on each page there's
18 handwritten deductions for supplies. Excuse me.
19 Every page except for the third page.

20 MR. KELLY: Thank you.

21 Q. Do you know what sort of supplies are being
22 deducted from installer pay at Lumin?

23 A. You know, I believe on this one it could
24 have been small parts.

25 Q. What kind of small parts would be --

1 A. Cable.

2 MS. TRUONG: Counsel, I'm just going to
3 object at this point. I don't think there's been any
4 identification about who this is.

5 MR. KELLY: Another objection. They seem
6 to refer to the week of December 2008, which I think
7 is outside the class period, which is three years.
8 And they involve an entity that is not a defendant in
9 the case. The documents on the face refer to December
10 '08. Based on documents received from the Secretary,
11 my understanding was the class period began in 2009.

12 Q. (By Mr. Lake) So Mr. Martinez, turning
13 back to Exhibit 10.

14 MR. KELLY: And further, there is no cause
15 of action relating to (inaudible) reimbursements in
16 the case.

17 Q. So Mr. Martinez, turning back to Exhibit
18 10, there's a deduction for supplies. Do you see
19 that?

20 A. Yes.

21 Q. And you said that it was for -- that at
22 Lumin installers were deducted for small parts?

23 A. Yeah. That is what it's looking like, yes.

24 Q. Now, what sort of small parts were
25 installers having deducted from their pay?

1 MS. TRUONG: Counsel, I'm just going to
2 object. Just for the record, this document that we're
3 looking at, I'll just start with the first page.
4 Everything is crossed out here and scribbled, so I
5 think that there's a lack of foundation in regards to
6 whether this is paid or -- but you can answer if you
7 know.

8 A. I don't know specifically.

9 Q. You don't know what?

10 A. What the supplies were.

11 Q. You were the vice-president of Lumin;
12 right?

13 A. Right.

14 Q. Now, when you were working there, were
15 supplies deducted from installer pay?

16 A. From what I remember, no. I don't remember
17 this technician, and I don't even remember the sheets.

18 Q. So, to the best of your recollection,
19 installers did not have to pay for supplies at Lumin?

20 A. Yes.

21 Q. And at AIS have installers ever had to pay
22 for supplies?

23 A. Never.

24 Q. What about if the installers are classified
25 as contractors?

1 A. Well then, yes. 1099 subs did, yes.

2 Q. What about -- excuse me. To clarify, at
3 AIS, installers who are classified as contractors have
4 to pay for supplies?

5 A. Yes.

6 Q. And at Lumin, installers who are classified
7 as contractors also had to pay for supplies?

8 A. That would have been the case, yes.

9 Q. It was the case?

10 A. Yes.

11 Q. Now, in your time as the president of AIS,
12 you mentioned one contractor installer previously.
13 Have there been other contractor installers?

14 A. No.

15 Q. Mr. Martinez, I'm going to have you turn
16 back to a previous document that we marked as Exhibit
17 4. It was the interrogatory responses of AIS.
18 Specifically, if you could turn to page 6 of the
19 document. Starting at line 8, AIS states in this
20 interrogatory response, "AIS technician are paid by a
21 piece rate scale or per job that they complete."
22 Skipping down a few sentences, "Their total hours are
23 calculated for the week, and their total pay is
24 divided by the number of hours worked to ensure that
25 they are being paid at least minimum wage."

1 Do you see that?

2 A. Yes.

3 Q. Is it your understanding that that is the
4 policy at AIS?

5 A. Yes.

6 Q. Can you explain a bit more what the -- how
7 this calculation works?

8 A. I'll give you a general knowledge. Again,
9 it's another Lisa question. We -- no matter how many
10 hours a technician works -- let's say they work under
11 40 hours for the week. They've only completed
12 specifically -- especially for like a newer
13 technician, we look at the production of the
14 technician, what jobs they've completed, and how much
15 they're billing for that week.

16 And if that -- so you take that number and
17 you divide it by the numbers of hours that they've
18 worked. If that number goes below minimum wage, we
19 proactively compensate the technician to make sure
20 they're meeting that minimum guideline.

21 Q. Has this pay system that you've described
22 been in place since AIS was first started?

23 A. Yes.

24 Q. Was a similar pay system in place at Lumin?

25 A. I don't know.

1 Q. As the vice-president you weren't involved
2 in that kind of stuff at all?

3 A. No.

4 Q. Can you turn to page 13 of the same
5 exhibit. At line 17, the sentence from AIS states,
6 "In 2009, technicians were not recording their hours."
7 Do you see that sentence?

8 A. Yes.

9 Q. The next reads, "They had previously worked
10 as subcontractors for Lumin, Incorporated. AIS was
11 not aware of how their hours should be tracked, and
12 they were not concerned with that tracking because
13 they were used to working on the piece rate system,
14 and they understood the benefit of being paid for the
15 work they could complete." Do you see that?

16 A. Yes.

17 Q. What does -- what sort of benefit is AIS
18 referring to as far as the benefit of being paid for
19 the work they could complete?

20 A. I believe that's referring to the amount
21 that they were being paid for each closed work order
22 as a 1099 sub. And as the pay sheets demonstrated,
23 the subs were paid a lot more than employees. So
24 that's the benefit that I believe we're referring to.

25 Q. But the subs also had to pay for their

1 supplies?

2 A. Yes.

3 Q. Are the subs -- when you say "subs" you're
4 referring to the 1099 independent contractors?

5 A. Yes.

6 Q. Are these 1099 independent contractors, are
7 they permitted to participate in the gas program that
8 you described earlier?

9 MR. KELLY: Vague and ambiguous. He's only
10 identified one, or he said contractor.

11 Q. You can answer.

12 A. Can you repeat the question?

13 Q. Are the 1099 independent contractors at AIS
14 permitted to participate in the gas program that you
15 described earlier?

16 MR. KELLY: Mischaracterizes the testimony.

17 Q. You can answer the question.

18 A. We don't have any 1099 subs right now.

19 Q. Now, but turning back to Exhibit 10, I
20 believe that would be the pay scales, or Exhibit 9,
21 there is still a contractor pay scale.

22 A. There probably is, but we don't have any
23 contractors.

24 Q. Okay.

25 A. So I haven't, like, erased it from the

1 company information sheets or whatnot, but we don't
2 have any subs, and I'm not going to ever have that
3 again.

4 Q. Turning back to page 6 of the interrogatory
5 responses that's been marked as Exhibit 4. Sorry.
6 Page 7. The last sentence is in red.

7 MR. KELLY: The timeline?

8 MR. LAKE: Excuse me?

9 MR. KELLY: You're referring to the
10 timeline paragraph?

11 MR. LAKE: Yes. The very last sentence on
12 page 7.

13 Q. "Initially, Lumin, Incorporated, estimated
14 hours based upon the types of jobs being completed,
15 i.e., three hours for an install and one and a half
16 hours for an upgrade." Do you see that?

17 A. Yes.

18 Q. Do you have -- you were the vice-president
19 of Lumin, Incorporated, and these are the discovery
20 responses of AIS. So, with that understanding, can
21 you provide any more information as to how Lumin made
22 these estimates?

23 A. No. Can I say something real quick?

24 Q. Please.

25 A. As far as titles and vice-president, I was

1 the manager. You know, I ran -- as far as
2 vice-president and billing and stuff like that,
3 there's certain things I wasn't involved with.

4 Q. And who would be the person at -- who was
5 at Lumin who would be -- who would be the person to
6 ask for more information about this?

7 A. It would be Mike.

8 Q. Was Lisa Kelley at Lumin?

9 A. Yes.

10 Q. What was her role at Lumin?

11 A. Controller. So she may have some input on
12 this.

13 Q. So do you know -- this discovery response
14 comes from AIS.

15 A. Right.

16 Q. So do you know where this information came
17 from?

18 A. When did we complete these?

19 Q. If you turn to the last page it is dated
20 January 17, 2014.

21 A. Probably something that we went over
22 together. And she had some input on the types of
23 questions that you're asking now as far as bookkeeping
24 and things of that nature. I answered more the
25 questions of operations, but we worked on this

1 together.

2 Q. Do you have any idea why Lumin would even
3 make such estimates, what they were used for?

4 A. All work orders have units based on them.
5 So they have an average of what a work order is
6 supposed to take. All work orders do. So we use that
7 information, and probably our experience told us what
8 the typical average work time for certain jobs
9 estimated to be.

10 Q. The information that we're describing on
11 page 7 was provided in response to a question to
12 describe and explain the method used for computing
13 employees' weekly compensation. So, do you know why
14 there would be any kind of estimating of hours that
15 would have any significance on employee compensation?

16 A. I believe just to make sure that we were
17 meeting minimum standards.

18 Q. The minimum wage?

19 A. Yes.

20 Q. But that was only based on estimates?

21 A. Well, if -- it says right here, "Initially
22 Lumin estimated hours based upon the types of jobs
23 completed" because we weren't recording hours at that
24 time. So it was probably why either Lisa or myself,
25 we went over this and we wrote that.

1 Q. Turning to the next page. In April --
2 excuse me, the top of the next page, line 1. "In
3 April 2010, Lumin began requiring technicians to
4 record their actual hours." Do you see that sentence?

5 A. Yes.

6 Q. Do you recall, when you were at Lumin, that
7 change taking place?

8 A. It was when Amy Ward came and visited us.
9 And she came in -- I don't know what it was called,
10 but she was doing an audit, something like that, but
11 she, at that point, informed us of guidelines and
12 expectations that we weren't meeting. And that's when
13 the changes started.

14 Q. So this was before AIS was formed. This is
15 when you were still at Lumin?

16 A. Yeah. But at that point, I mean, AIS -- I
17 don't know exactly what date AIS was fully formed.

18 Q. We can turn back to Exhibit 2, and I think
19 it states that it was formed in September of 2010.

20 A. September.

21 Q. Several months later. Yeah.

22 A. September of 2010, here. In September of
23 2010 Lumin, Inc., began paying overtime for rates. So
24 that should say in September of 2010. Lantern.

25 Q. But going to the first sentence.

1 A. 2010.

2 Q. April. It says April of 2010.

3 A. Right. At that time, yeah,, we were
4 loosely still operating under Lumin, yes.

5 Q. When you say you were loosely operating --

6 A. Well, we were on our way -- the partnership
7 had dissolved, and we were on our way to becoming
8 Lantern. So it was a transition period.

9 Q. So, by April of 2010, were you in charge at
10 Lumin if the partnership had already dissolved?

11 A. I'd have to look at the -- when we
12 officially signed the paperwork.

13 Q. When you were at Lumin, did you have any
14 role in the hiring process?

15 A. Yes.

16 Q. Did you have the power to hire or fire
17 installers?

18 A. Yes.

19 Q. Did you have any role in determining the
20 rate of pay at Lumin?

21 A. It was discussed, but it was already
22 preset. And again, it was also a big transitional
23 period going from the 1099 sub model to the W-2 model.

24 Q. So turning back to page 8, line 1. "In
25 April 2010, Lumin began requiring technicians to

1 record their actual hours." Now, it's your testimony
2 that this new practice began in response to the U.S.
3 Department of Labor's investigation?

4 A. Oh, yeah.

5 Q. Prior to that you were not aware that
6 installers should be writing down their actual hours
7 worked?

8 A. Including drive time. We were under --
9 because we'd already been audited by multiple agencies
10 by that point. So we were under the impression that
11 we were doing what we were expected to be doing.

12 Q. But according to AIS in this interrogatory
13 response, before then Lumin was just estimating. The
14 drivers were not in fact writing down their hours
15 worked?

16 A. I mean, that sounds right, yeah. That's
17 four years ago. I mean, it sounds -- I mean, I know
18 we filled these out, but the questions were dating
19 back to a time. I don't have an exact recollection.

20 Q. Fair enough. But my question is before the
21 U.S. Department of Labor came in and performed its
22 investigation, were you aware that the installers were
23 supposed to be writing down their hours worked?

24 A. No. Again, I've assumed, because we had
25 new business owners, that we were doing what we were

1 supposed to be doing. It wasn't until Amy Ward showed
2 up, told us we were supposed to be doing this, is when
3 the changes started.

4 Q. So from the previous investigations by the
5 previous agencies that you've described, that that
6 knowledge was not transmitted to you?

7 A. No.

8 Q. Or to anyone at Lumin?

9 A. No, no.

10 Q. Turning to the next sentence. "In
11 September 2010, Lumin began paying overtime rate for
12 overtime hours." Does that -- is that consistent with
13 your recollection?

14 A. If that's around the time Amy Ward showed
15 up, then yeah.

16 Q. So before then installers were not paid
17 overtime rates for overtime hours worked?

18 A. I mean, technically, no. It was a piece
19 rate system. Their hours were accounted for because
20 we kind of loosely knew exactly how -- not loosely.
21 We had a good estimated index of how long work should
22 take. But, yeah, that's when we started paying
23 overtime hours.

24 Q. When you say that you had an estimated
25 index of how long the work would take, where did that

1 come from? What information was that based on?

2 A. Well, like I said, each work order has got
3 a certain allotted units of how long each said work
4 should take. That, with our experience, as far as how
5 long said work should take. But as far as tracking
6 the full scope of hours, it wasn't until Amy Ward had
7 showed up.

8 Q. Right. And the questions I'm asking are
9 just about the time period before then when you were
10 conducting an estimate.

11 A. Sure.

12 Q. So it was based on the information that was
13 in the work orders, which would have an estimate?

14 A. Yes.

15 Q. And that work order came from DirecTV?

16 A. Yes.

17 MR. LAKE: This document will be marked
18 Exhibit 11. It's Bates stamped AIS 0087123.

19 (Marked for identification Exhibit 11.)

20 Q. Have you had a chance to review Exhibit 11,
21 Mr. Martinez?

22 A. Yes.

23 Q. Do you recognize this document?

24 A. Loosely. I mean, it's a while ago, but
25 yes.

1 Q. And what's your understanding of what
2 Exhibit 11 is?

3 A. This was a billing sheet filled out by
4 technicians.

5 Q. Do you see the date in June 2010?

6 A. Yes.

7 Q. Do you see there's no place for the
8 installers to write down their hours worked?

9 A. Yes.

10 Q. So in AIS's discovery responses it states
11 that "In April 2010, Lumin began requiring technicians
12 to record their actual hours." So if it wasn't on
13 this sheet, where were technicians supposed to be
14 writing down their hours?

15 A. I don't know.

16 Q. Are there any other sheets that you recall
17 that installers would fill out at Lumin where they
18 could write that kind of information down, the hours
19 worked?

20 A. No.

21 MR. LAKE: You can set aside Exhibit 11 for
22 now and we'll move on to Exhibit 12.

23 (Marked for identification Exhibit 12.)

24 Q. And I'm not going to ask you explicit
25 detailed questions about Exhibit 12. So you don't

1 have to review it in its entirety, if you don't want
2 to, but obviously, if you would like to, take your
3 time. But do you recognize Exhibit 12?

4 A. No.

5 Q. Have you seen payroll summaries at AIS
6 before?

7 A. Yes.

8 Q. Does it look anything like this document in
9 front of you as Exhibit 12?

10 A. No.

11 Q. When you were at Lumin, in your role as the
12 manager or vice-president, did you review payroll at
13 all then?

14 A. No.

15 Q. So the statement in AIS's interrogatory
16 that "In September 2010, Lumin began paying overtime
17 rate for overtime hours," are you the best person to
18 provide information about that statement?

19 A. So in September of 2010, Lumin started
20 paying overtime hours.

21 Q. That's what AIS states in its interrogatory
22 responses under Exhibit 4. Now, my question is, I
23 have additional follow-up questions on that statement.
24 And I'm -- it relates to Exhibit 12, but you're
25 stating that you do not recognize --

1 A. I'd talk to Lisa about this.

2 Q. You can set aside Exhibit 12 for now. At
3 this time, if you could turn back to Exhibit 4, the
4 interrogatory responses. And you might want to just
5 keep that Exhibit 4 loose and I'll ask you additional
6 follow-up questions later on.

7 Turning back to page 8, line 3, again the
8 response from AIS. "After the November 2010 U.S.
9 Department of Labor audit, with information thereby
10 gained, the time tracking guidelines was created
11 because technicians were not properly recording their
12 time, e.g., were not including drive times or wait
13 times." Do you see that?

14 A. Yes.

15 Q. Do you recall that change being made?

16 A. Yes. And it was a transition, but yes,
17 definitely, yes.

18 Q. Did you have any role in implementing these
19 new time tracking changes as, I believe, at that time
20 AIS was in business?

21 A. Yeah. Principal meetings with the
22 technicians. Letting them know how to properly fill
23 out their billing sheet.

24 Q. So prior to the Department of Labor's
25 audit, you were unaware of drive time or wait time

1 being considered work time?

2 A. Correct.

3 Q. And you were unaware of the requirement to
4 record hours worked?

5 A. That would be correct also, yes.

6 MR. LAKE: Let's have the court reporter
7 mark this as the next exhibit.

8 (Marked for identification Exhibit 13.)

9 Q. If you could look at Exhibit 13.

10 A. Okay.

11 Q. Have you seen this document before?

12 A. Yes.

13 Q. And did you have any role in drafting or
14 reviewing or approving this document?

15 A. I'm sure I did.

16 Q. Are these the time tracking guidelines that
17 AIS is referring to in its response to interrogatory 1
18 on page 8?

19 A. I'm assuming so.

20 Q. Are you aware of any other time tracking
21 guidelines that have been --

22 A. No.

23 Q. I'm sorry. You just want to make sure to
24 keep letting me finish the question before you start
25 answering, just so the transcript is clear.

1 Are you aware of any other time tracking
2 guidelines that have been given out by AIS besides
3 those in Exhibit 13?

4 A. No.

5 Q. Based on what information did AIS draft
6 these guidelines?

7 A. Amy Ward and the DOL website, which is
8 where we got the formula to figure out how to pay
9 overtime on a piece rate system.

10 Q. Were AIS installers also instructed to
11 write down the time spent on jobs even if they were
12 not completed?

13 A. Yes.

14 Q. Where does it say that in Exhibit 13?

15 A. It might not say it on there, but they are
16 instructed to include all their time.

17 Q. What about for jobs where customers were
18 not home?

19 A. All-inclusive, all their time.

20 Q. But that's not in the time tracking
21 guidelines?

22 A. You know, if it's not it should be. I do
23 know for a fact that we do record all of their time.
24 All of their time is compensated for.

25 Q. So, besides the written guidelines, how

1 else are -- how else does AIS communicate to drivers
2 what sorts of time they need to be writing down or how
3 they need to record their time?

4 A. Well, when we do our -- when we're
5 preparing our billing we go over every single billing
6 sheet that's handed in to us. And we're going over
7 and we're making sure there's no gaps in their times
8 to where basically their start times is when they
9 either get to the job site or they get to the office,
10 and their stop time is when they close their last job.
11 So, generally, if it's all-inclusive, that includes
12 the, you know, reschedules or the jobs that were
13 uncompleted. I mean, we make it really easy. It's
14 basically when you show up to the office and when you
15 close your last job.

16 MR. LAKE: Let's mark another exhibit,
17 Exhibit 14, the AIS employee handbook.

18 (Marked for identification Exhibit 14.)

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. Is this the current employee handbook?

22 A. I believe so.

23 Q. And who wrote this handbook?

24 A. I put it together. It's from the previous
25 handbook to a new one, and it was put together by me.

1 Q. So, do you have the power to make changes
2 to the handbook?

3 A. Yes.

4 Q. Has the handbook changed any time recently?

5 A. No.

6 Q. Has the handbook stayed the same since AIS
7 was formed in 2010?

8 A. I believe so.

9 Q. Is there anything in this handbook about
10 writing down hours worked?

11 A. I do not believe so. Well, actually, as
12 far as compensation is concerned, field service
13 technicians are paid for commissions through sales or
14 installations. Billing sheets to be submitted. As
15 far as times specifically, no.

16 Q. Is there any reason that it hasn't been --
17 the handbook hasn't been updated to include that
18 information?

19 A. No. There's no specific reason.

20 Q. Has anyone at AIS been disciplined or
21 mentored or had any kind of follow-up work done
22 because they weren't writing down all their hours?

23 A. All the time.

24 Q. What is that -- has any kind of discipline
25 taken place?

1 A. Discipline, no. But we definitely are on
2 top of the technicians that are not fully recording
3 all of their hours.

4 Q. And what does that mean? Just following up
5 with them?

6 A. Just to sit down, going over the billing
7 sheet they just handed in, and making sure that they
8 understand what they need to be recording.

9 Q. And you said this happens all the time?

10 A. Yeah. We -- we're diligent about the
11 billing sheets and going over them. Making sure
12 they're as accurate as possible.

13 Q. You can set aside Exhibit 14, but if you
14 could turn to page 14 of the interrogatory responses
15 in front of you. The last paragraph of page 14, in
16 red font starting between lines 19 and 20, states that
17 "AIS went through our billing sheets again in the fall
18 of 2011. At that time, AIS was consistently paying
19 overtime according to the guidelines that she had
20 communicated to us." Do you see that sentence?

21 A. Yes.

22 Q. Do you know who is the "she"?

23 A. I'm assuming we're talking about Amy Ward.

24 Q. But are you sure, or can you think of
25 anyone else it would be?

1 A. No.

2 Q. Any other female?

3 A. No. The only person we've dealt with
4 through the Department of Labor has been Amy Ward.

5 Q. And did anyone at AIS take it upon
6 themselves to read any labor laws or to review other
7 information besides what Amy had told you?

8 A. After her initial visit, yeah, we started
9 trying to research, navigate to see, you know, what we
10 needed to be doing and whatnot.

11 Q. Looking at the next sentence of page 14.
12 "After looking at the billing sheets in August or
13 September of 2011, AIS pointed out that some of the
14 technicians were not counting their time between jobs,
15 and that that time should be included in their hours
16 as well." Do you see that?

17 A. Yes.

18 Q. Do you recall that occurring in the fall of
19 2011 or August or September?

20 A. No.

21 Q. Do you know what this response means when
22 it's -- it states "AIS pointed out that some of the
23 technicians were not counting their time between
24 jobs"? What does "point out" mean?

25 A. I'm assuming just identifying the

1 inaccuracies and sitting with the technicians, making
2 sure that they're recording what they're supposed to
3 be recording.

4 Q. Well, the last sentence states, "AIS made
5 this final correction, and from September 2011, it is
6 believed that AIS has fully complied with all of the
7 requirements." Do you see that?

8 A. Yes.

9 Q. And is that your understanding as well?

10 A. Yes, it is.

11 Q. Since September of 2011, has AIS, it sounds
12 like, been doing kind of periodic reviews of the time
13 sheets?

14 A. We review the time sheets weekly.

15 MR. LAKE: I'll have you look at these
16 billing sheets that will be marked as Exhibit 15.

17 (Marked for identification Exhibit 15.)

18 Q. Do you recognize these documents? Do they
19 look familiar to you?

20 A. Yes.

21 Q. And what's your understanding of what
22 Exhibit 15 is?

23 A. These are billing time sheets the
24 technicians hand in weekly with their completed work
25 orders.

1 Q. Can you turn to page 4 of Exhibit 15.
2 Looking at the second column called "Time In/Out."
3 And this document is Bates stamped AIS 0043541. Do
4 you see that it doesn't list travel time? This is the
5 sheet for Rob Meek, starting date February 3, end date
6 February 9th.

7 A. Are you saying there should be a column
8 that states travel time?

9 Q. No. What I'm stating is, if you look at
10 the time in/time out column, first job, 8:30 to 10,
11 second job, 10:30 to 12:30, do you know why there's
12 not anything listed between 10 and 10:30?

13 A. Might have taken a break. I don't know.

14 Q. The next column -- excuse me. The next
15 entry, 10:30 to 12:30, that's the second line. The
16 third line, 1:00 to 4:00, any idea what the gap
17 between 12:30 and one is?

18 A. No.

19 Q. And when there are these gaps, does AIS do
20 any follow-up to find out what -- whether the
21 installer was failing to write down travel time or
22 that was a break or lunch or anything like that?

23 A. We try to catch all inaccuracies. If some
24 things are missed, I can't speak to that. Same thing
25 with generalities. A technician will mark down, you

1 know, eight to 10, 10 to 12. There's no travel time
2 in there. But we are assuming that it's included
3 also.

4 Same thing with the note on the first page,
5 right here where we asked the technician to record
6 start times accurately. Sometimes the technician
7 will, you know, put in an earlier time than they were
8 actually in the office or whatnot. So I mean, there
9 is due diligence to go over everything from -- exactly
10 what you described, including start and stop times. I
11 don't know. I can't answer as far as exactly why
12 there's a gap in those times, though.

13 Q. Are the installers supposed to list their
14 time at the shop when they arrive in the morning?

15 A. Yes. That's their start time. So even
16 though it's -- on, for example, the first page,
17 Rebecca Wood, that 8:30 should include when they got
18 to the shop.

19 Q. They don't -- they're not instructed to put
20 a separate entry so that the shop entry is clearly
21 delineated from the time actually spent on a work
22 order?

23 A. No.

24 MR. KELLY: One more time, please.

25 (Record read as requested.)

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A. No.

MR. LAKE: Well, I think this is actually
probably a good time for a lunch break for everybody.
It's about 12:30. We've been going for a while.

(Off the record from 12:30 to 1:30 p.m.)

1 AFTERNOON SESSION

2 1:30 p.m.

3
4 MR. LAKE: We're back on the record.

5 Q. If you could turn back to the last document
6 we looked at, Exhibit 15. I just had a couple more
7 follow-up questions. If you could turn to page 4 of
8 that, which is marked at AIS 0043541. This is again
9 the billing sheet for Rob Meek.

10 Now, we were speaking earlier about the
11 gaps between the jobs on February 3rd of half an hour.
12 When there are gaps like this on the billing sheet,
13 are the installers paid for that time?

14 A. Do you mean is the billing going from 8:30
15 to four on that said day?

16 Q. Right. Or would it be broken up on the per
17 job basis?

18 A. I believe they're paid from 8:30 to four,
19 but I can't say for sure.

20 Q. Would Ms. Kelley be able to testify more
21 accurately on that?

22 A. Yes.

23 Q. Now, when the Department of Labor came in
24 and the time tracking guidelines were issued, you
25 explained to the installers that they needed to keep

137

1 more complete track of their hours. What did you tell
2 them about why they needed to do that?

3 A. I don't think I did. It was just a new
4 process that we were doing.

5 Q. Okay. Did you explain anything about, you
6 know, why it might be important to do that or anything
7 like that?

8 A. Basically I explained that we needed to
9 compensate them for their time fully, and we were
10 going towards this new process of capturing all their
11 time going forward.

12 Q. Now, how did -- let me back up. To your
13 knowledge, when you started at Lumin, was Lumin
14 already working with DirecTV?

15 A. Yes.

16 Q. Did you ever speak with anybody at Lumin as
17 to how that relationship was formed?

18 A. I know they started in -- out of the
19 Tumwater facility, and they eventually got asked to
20 work out at the Lynnwood facility. DirecTV's
21 facilities. But that's all.

22 Q. So, Lumin was working out of DirecTV
23 facilities?

24 A. Well, what I mean is they performed work
25 for that office, geographic location.

1 Q. And when Lumin was transferred or dissolved
2 and AIS was formed, what steps did you take to, I
3 guess, keep the relationship going with DirecTV?

4 A. I informed the current -- or the then
5 current director of operations, Chris King, of what
6 was going on. Let him know that I was still
7 interested in performing services for DirecTV, and
8 what I needed to do to continue that relationship.

9 Q. And what did you -- what did Mr. King tell
10 you, then, in response?

11 A. I can't remember for sure, detailed.

12 Q. Generally.

13 A. Generally, no problem. Welcome aboard.
14 And facilitated the transfer of or the acceptance of
15 the new contract.

16 Q. And has AIS worked with other cable or
17 satellite companies?

18 A. Ever up until now or --

19 Q. Yes.

20 A. Yes.

21 Q. Which other ones?

22 A. Currently -- obviously, our main client is
23 DirecTV, but we are also working with Multiband
24 Corporation. We do service work for their -- when I
25 say "we" I mean me -- do service work for a variety of

1 their clients that they have their equipment in and
2 their dealings with.

3 Q. What was the name of the company?

4 A. Multiband.

5 Q. B-A-N-D?

6 A. Yes. And that's a new relationship,
7 something that we just fostered in the past couple of
8 months. Prior to having other clients, we've tried
9 working with other products, like Control4. It's a
10 home automation system. That was unsuccessful. We're
11 also authorized retailers of DirecTV. So we do have
12 the opportunity to sell the product ourselves and
13 install it to generate income that way.

14 Q. What would you do as a -- or what do you
15 do, then, as a retailer?

16 A. Well, we've tried a couple of avenues.
17 Also unsuccessful. We've hired salesmen to advertise
18 and sell the product for us. Door-to-door marketing
19 campaign to try to attract and gain our own customers.
20 That's it.

21 Q. But sounds like that's been a pretty minor
22 source of revenue for AIS up until now?

23 A. Yes. That would be correct.

24 Q. And the Multiband Corporation is, you said,
25 just the past couple of months?

1 A. Yes.

2 Q. Beside those two, have there been other
3 cable or satellite companies that AIS has worked with?

4 A. No.

5 Q. Is there any reason that AIS hasn't worked
6 with other cable companies?

7 A. Not by choice. It's just we haven't been
8 able to find new clients.

9 Q. Are you aware of any restrictions placed by
10 DirecTV on who AIS can work with?

11 A. No.

12 Q. So, the vast majority of AIS's revenue
13 comes from DirecTV; correct?

14 A. Correct.

15 Q. Is that something that AIS wants to change
16 to become more diversified?

17 A. Yes.

18 Q. Can you turn back to the contract we looked
19 at before. It's Exhibit 5. Now, I know this contract
20 is the contract between Lumin and DirecTV. I'm going
21 to use it to ask some follow-up questions on this and
22 some additional questions about your contract with
23 AIS.

24 Now, when you assumed this agreement at the
25 formation of AIS, as detailed on pages 43 and 44, were

1 you given the opportunity to change any terms or
2 negotiate any terms in the agreement?

3 A. No.

4 Q. When AIS formed its own new contract with
5 DirecTV, did you negotiate any terms of that -- in
6 that agreement?

7 A. No.

8 Q. Were you presented with the agreement by
9 DirecTV as is?

10 A. Yes.

11 Q. Did you feel that you could negotiate any
12 terms?

13 A. Not at the time. Fresh start. New
14 contract. I didn't feel like I was in a position to
15 make demands.

16 Q. Since then have you attempted to
17 renegotiate any terms in AIS's contract with DirecTV?

18 A. Yes. We do work on their adjusted rate
19 card.

20 Q. And that adjusted rate card was adjusted by
21 DirecTV?

22 A. Through my request, yes.

23 Q. Can you talk a little bit more about that?

24 A. Sure. When we first formed AIS and began
25 working for DirecTV, it became apparent, specifically

1 working under the W-2 model under the direction that
2 we were going in, that the current rate card we were
3 working under wouldn't work out for us. We wouldn't
4 be able to continue performing work for DirecTV unless
5 we got something better, they paid a little bit more.

6 So I approached the director of operations
7 at the time, Chris King. I let him know of what I
8 needed and wanted to know what processes I should
9 follow or what they can do. They in turn began --
10 they began working on a new rate card for specifically
11 AIS in the Washington market, and they gave me a
12 proposal which sat well with me, and I agreed to it.
13 And that's the current rate card we're working under
14 right now.

15 Q. How long had AIS been in business at that
16 point when you did that negotiation?

17 A. I couldn't tell you specific dates.

18 Q. Any approximation? I mean, was it right
19 when AIS started?

20 A. It probably was around 2011.

21 Q. And since 2011, have there been any changes
22 to the rates from DirecTV?

23 A. No.

24 Q. For any of the tasks that AIS performs?

25 A. Did you ask me if there was any increases

1 or changes?

2 Q. Changes.

3 A. Well, I don't know exactly what year, but
4 like we referenced before, as far as change in what
5 the rate card looked like as far as for certain
6 categories, I believe SWM installation went down a
7 couple of dollars. But aside from that, no. There
8 hasn't been any major changes.

9 Q. So no decreases in the rates paid by
10 DirecTV beside the --

11 A. Aside from that one SWM line item, no.

12 MR. LAKE: Mr. Martinez, I'll have you
13 review a document which will be marked as Exhibit 16.

14 (Marked for identification Exhibit 16.)

15 Q. Have you seen this document before?

16 A. Is this the new rate card we're working
17 under?

18 Q. That would be --

19 A. It's a rate card. I don't know if it's the
20 newer one or not.

21 Q. What would be different between the newer
22 and the older one? Just the SWM labor?

23 A. No. I mean, the one that we -- the
24 adjusted rate card that we're currently working under,
25 the prices would be different under install, upgrade.

1 Q. Well, right now, do you know how much AIS
2 is paid for an install?

3 A. You know, honestly, I should know, but Lisa
4 would give you an exact answer to that question.

5 Q. Now, when the rates changed from DirecTV,
6 when you said that they -- you worked with Chris King
7 and the rates were increased, did the rate of pay to
8 installers change?

9 A. No.

10 Q. And have there been periodic additions or
11 subtractions from certain tasks, and have certain
12 tasks been taken off or added to the rate card?

13 A. Yes.

14 Q. Can you think of any examples?

15 A. There's a new wireless client that's being
16 installed now that would have been an addition to the
17 rate card.

18 Q. So it's not on this -- you don't see it on
19 the rate card that's been marked as Exhibit 16?

20 A. No, I don't.

21 Q. Any other examples you can think of sitting
22 here today?

23 A. No.

24 Q. Turning back to the contract. You can also
25 keep that one out, too, while I have some more

1 follow-up questions. If we can turn to page 25. The
2 paragraph that's titled "Personnel," towards the
3 bottom of that paragraph is a sentence that states:
4 "Contractor shall, throughout the term of the
5 agreement, maintain a minimum one-to-20 supervisor to
6 technician ratio, including subcontractors in each
7 individual market that contractor operates."

8 My question is, does AIS's contract with
9 DirecTV have a similar provision?

10 A. I don't know.

11 Q. Are you aware of any ratio that AIS is
12 required to maintain between supervisors and
13 technicians?

14 A. No. I've never been spoken to about that.

15 Q. Has AIS had to provide any information to
16 DirecTV regarding the number of technicians or
17 supervisors currently working at AIS?

18 A. As staffing projections, yes, specifically
19 about technicians.

20 Q. What about supervisors?

21 A. No.

22 Q. What kind of staffing information, then,
23 does AIS have to provide to DirecTV about installers?

24 A. The work volume that we're able to handle.
25 What our current ability is. What we project it may

1 be going forward, specifically during a heavier time
2 of year. They may ask if we can handle more work, and
3 that speaks directly to the size of my staff.

4 Q. Turning to page 31. The paragraph under
5 "Response Times" and "Scheduling," in approximately
6 the middle of the page it says, "Contractor shall have
7 sufficient labor available to meet DirecTV's response
8 times, and contractor shall maintain a specified
9 amount of time, seven days a week, for morning
10 appointments and afternoon appointments."

11 Does AIS's contract with DirecTV have a
12 similar requirement?

13 A. Without the contractor -- contract in front
14 of me I couldn't answer to that.

15 Q. Is it your understanding that AIS is
16 required to have a sufficient amount of labor to meet
17 DirecTV's needs?

18 A. There's a certain desire for AIS to be able
19 to meet a certain set amount of workload. But whoever
20 -- there's only one person that dictates that and it's
21 me, and I'm able to show them exactly what I'm able to
22 offer. And if they want to continue the relationship
23 it's up to them.

24 Q. Is AIS required to have installers
25 available seven days per week?

1 A. No. No. I mean, I read it right in here,
2 but no, I mean, right now my offices are pretty much
3 shut down on Wednesdays. And, I mean, aside from what
4 I want -- specifically I want certain shifts covered
5 -- they don't dictate us being open seven days a week.

6 Q. Okay. Still on page 31. Towards the
7 bottom of the page it states that if AIS cannot make
8 an appointment time -- the subparagraph B. "In the
9 event that contractor is unable to perform and
10 complete all assigned, scheduled fulfillment service
11 appointments on the scheduled date and within the
12 scheduled appointment window, contractor shall
13 promptly contact the local DirecTV dispatcher by
14 telephone such that the dispatcher may notify the
15 DirecTV customer of the scheduling problem prior to
16 the scheduled appointment time."

17 Does AIS have a practice of contacting the
18 local DirecTV dispatcher if AIS is going to be unable
19 to meet the assigned appointment time window?

20 A. It happens very rarely, but yes, we let the
21 dispatch know that we're unable to handle certain work
22 loads for that day. And first we inform the site
23 manager, whether we let them know exactly what's going
24 on, and then the customer is informed.

25 Q. The next sentence reads that "DirecTV will

1 promptly reschedule the appointment at the earliest
2 time convenient to the DirecTV customer." Going on to
3 state that "DirecTV reserves the right to immediately
4 reassign such fulfillment service work order to
5 another party."

6 Is it your understanding that DirecTV has
7 that right to reassign work orders that AIS is not
8 able to complete?

9 A. Yeah.

10 Q. Has that happened?

11 A. Rarely. If they're reassigning it to
12 anybody, they're reassigning it to themselves.

13 Q. The next sentence goes on to state that "In
14 such case, contractor shall not receive any
15 compensation and may" -- well, a misprint but "may
16 subject contractor to a charge as a result of a missed
17 appointment."

18 Has DirecTV charged AIS for any missed
19 appointments?

20 A. No.

21 Q. Now, we talked -- you spoke a little
22 earlier about the ebbs and flows of the work done by
23 AIS. What steps, if any, does AIS take during the
24 slow times to make sure there aren't too many
25 installers around, not enough work for everybody?

1 Anything?

2 A. No steps.

3 Q. And during the slower times versus the fast
4 times, or the busier times, does DirecTV -- or excuse
5 me -- does AIS make any changes in the number of
6 installers?

7 A. No.

8 Q. So it's just the number of hours worked by
9 installers that changes?

10 A. Yes.

11 Q. Sorry. Was your answer yes?

12 A. Yes.

13 Q. And the number of days per week worked by
14 the installers?

15 A. Yes.

16 Q. And does DirecTV provide any direction to
17 AIS on how many installers will be needed to
18 accomplish the projected work orders?

19 A. Yes.

20 Q. What does that direction entail?

21 A. They have projections of the estimated
22 workload, and they request that we be staffed to a
23 certain level to handle the workload. Whether we get
24 there or not is a different story. We talked about
25 difficulty staffing, job place market, hiring, things

1 of that nature. But the request is put in.

2 Q. How precise is the request, as in does it
3 state how many installers need to be working at AIS on
4 a given day to accomplish the work orders?

5 A. Yes. They give me generalities, but yes,
6 they do give me a number.

7 Q. Does DirecTV maintain a 1-800 number for
8 installers to call during their shift?

9 A. Dispatch, yes.

10 Q. And what is your understanding of why the
11 installers would call the dispatch?

12 A. The only time any of our installers call
13 dispatch is whenever they're encountering any type of
14 technical difficulty, scheduling difficulties, or
15 difficulties with the work order being incorrectly
16 built.

17 Q. What about when the installer arrives at a
18 customer's home?

19 A. They use -- they go to a website on their
20 smart phones and they put themselves on sites.

21 Q. Whose website?

22 A. It's a Click also. Same type of program.

23 Q. It's a website that's -- is it AIS's
24 website?

25 A. No, no. It's a DirecTV website.

1 Q. What about when they leave the customer's
2 home?

3 A. They access the same program and they go
4 off site.

5 Q. So when AIS installers call the dispatch
6 for the tech difficulties or the scheduling
7 difficulties, or the incorrect work orders, does an
8 AIS supervisor or you get involved at all in that
9 process?

10 A. No.

11 Q. So, do you know what happens then, though?

12 A. We have a general knowledge. Basically if,
13 scenario A, a technician gets to a job site, and the
14 customer wants to reschedule or wants a different
15 appointment, dispatch is notified of the occurrence,
16 and the customer gets on the phone, speaks to
17 dispatch, and they put the work order on hold.

18 Q. And in that instance, would the dispatcher
19 then send the installer to a new job?

20 A. No, no. All work orders -- we're
21 prerouted. We are not dynamic, we're static. So the
22 technician already has a set amount of work for that
23 day. Once there's a resolution to that, the
24 technician will go to the next job on their own.

25 Q. You've mentioned a DirecTV site manager a

1 few times during today's deposition. What is your
2 understanding of the duties of this site manager?

3 A. DirecTV's site manager, my understanding of
4 his duties, is the day-to-day operations of his
5 facility and his staff, which includes his warehouse
6 and the building.

7 Q. And what interactions does AIS have with
8 this DirecTV site manager?

9 A. I have monthly meetings with the site
10 manager.

11 Q. Or periodic meetings if there's a work
12 force issue as far as needing more workers?

13 A. Anything that -- any information that needs
14 to be disseminated. Any concerns he may have that he
15 may think I would need to know immediately.

16 Q. And the DirecTV site manager, does he meet
17 with anybody else beside you?

18 A. No.

19 Q. Never talks to the supervisors?

20 A. Besides from a hi and bye, no.

21 Q. Are there other individuals with DirecTV
22 that you talk to on a periodic basis?

23 A. No. Just the site manager.

24 Q. What about the operations person that you
25 spoke about earlier, the director of operations?

1 A. Oh, the current one, Mark Mastin? That's
2 even less, but, yes, I do speak with him.

3 Q. And what kind of reasons would you speak to
4 him about?

5 A. Whatever concerns he has at the moment.

6 Q. What kind of concerns has the director of
7 operations spoken to you about previously?

8 A. Staffing. You know, how far along are we.
9 Service metrics, if we're causing a big impact in his
10 region as far as service-related issues.

11 Q. Briefly turning back to the site manager.
12 What kind of concerns has the site manager brought to
13 your attention before?

14 A. Same type of concerns. Just on a more
15 local scale. Specifically his sites and our impact on
16 his site's quality goals, service numbers.

17 Q. And what is your understanding of what this
18 site manager's area is geographically?

19 A. The Lynnwood site manager, his area, I
20 believe, begins in Bellingham and ends in -- from
21 north to south it would be from Bellingham to
22 Enumclaw. East to west it would be from West Seattle
23 to, I'm assuming, Bellevue.

24 Q. But, so, his area covers all the places
25 where AIS would work?

1 A. Yes.

2 Q. Does anyone with DirectTV contact AIS's
3 installers during their shift?

4 A. No.

5 Q. For any reason?

6 A. No.

7 Q. The dispatcher wouldn't contact the
8 installers?

9 A. No.

10 Q. And the site manager wouldn't contact the
11 installers?

12 A. No.

13 Q. Does DirectTV have any other field personnel
14 who you work with at AIS?

15 A. No.

16 Q. So besides the site manager and the
17 director of operations, is it your testimony that
18 there's no one else that, from DirectTV, that you
19 interact with?

20 A. Field-wise?

21 Q. In general, in your role as the president
22 of AIS.

23 A. Well, I've interacted with the warehouse
24 manager when we talked about inventory. That's pretty
25 much it. I don't deal with site managers, field

1 staff, leadership team at all.

2 Q. Does the field staff, anyone from the field
3 staff, come into AIS's office for any reason?

4 A. Once a month a representative of the
5 Lynnwood office will come down and perform an end-of-
6 month inventory inspection. Basically they just
7 account for all the equipment that's been issued to
8 us.

9 Q. Any other occurrences where DirecTV field
10 staff will come to AIS's field offices?

11 A. No.

12 Q. And besides the field staff, does the
13 warehouse manager come to AIS's offices?

14 A. At a time he may have been one of the
15 representatives to come down to do the end-of-month
16 inventory audit.

17 Q. Are there any other DirecTV personnel who
18 come to AIS's offices?

19 A. Aside for the audit, no.

20 Q. Does DirecTV personnel accompany installers
21 while they're performing their work out in the field?

22 A. No.

23 Q. At any time has that happened, to your
24 knowledge?

25 A. No.

1 Q. Does DirecTV personnel follow up after an
2 AIS installer has completed his work? "Follow up"
3 meaning going to the customer's home to see how the
4 AIS installer did their job?

5 A. In the past they've had a QC program. So
6 they are doing a quality inspection of the
7 installation work done.

8 Q. When you say "in the past," is it your
9 understanding that that no longer happens?

10 A. Yes. It's -- I don't think they have a QC
11 program anymore.

12 Q. Is it something that has -- this QC
13 program, has it been over for several years?

14 A. It's been over for a while. Several years?
15 Probably at least two.

16 Q. How frequently were DirecTV personnel going
17 and doing these follow-up quality control inspections
18 when it was happening?

19 A. They had a scheduled program. I don't know
20 exactly how frequently. We would just receive the
21 feedback at one of my weekly meetings. We'd get
22 handed, you know, the QCs.

23 Q. What kind of weekly meeting are you talking
24 about?

25 A. In the past some of the meetings were more

1 frequent. It's changed over time. But there have
2 been times of the year where I had a weekly meeting
3 with the site manager.

4 Q. Were you given any reason for why the more
5 frequent meetings were made less frequent with the
6 site manager?

7 A. No. That's at their discretion.

8 Q. Is it based on -- the frequency of these
9 meetings, I guess, is it based on the ebbs and flows,
10 as you described, of the work coming in, or is it
11 something that's just generally changed over time?

12 A. It's solely at the discretion of the site
13 manager, what he wants.

14 Q. And lately how often have those meetings
15 been --

16 A. Monthly.

17 Q. Has anyone from DirecTV provided any
18 instruction or training to AIS installers?

19 A. Ever?

20 Q. I mean, yes, ever.

21 A. Yes.

22 Q. Can you describe what that instruction or
23 training has consisted of?

24 A. When we had a Tacoma office the DirecTV
25 trainer would come down once a month and do what's

1 called a video of the month. I believe this was in
2 the years -- again, I can't be for sure -- 2008, 2009,
3 2010. And would show a -- the video of the month,
4 whatever was on that video.

5 Q. What kind of topics, I guess, would be on
6 this video?

7 A. Just technology coming out. Best
8 practices.

9 Q. You said these trainings were limited to
10 the Tacoma office?

11 A. Yes, because we would -- at the time, when
12 we had two offices, we would have a -- bring both
13 staffs into the Tacoma office, yes.

14 Q. So the training was for all AIS personnel?
15 They would just take place in the Tacoma office?

16 A. Yes. Well, no, no. At that time, we were
17 working for two different regions. There was a
18 Tumwater DirecTV office and a Lynnwood DirecTV office.
19 Those meetings never happened at the Lynnwood DirecTV
20 office. They were isolated to this offices over here.
21 So the staff that worked on this side of the bridge
22 didn't attend those meetings.

23 Q. And were you given any reason for why
24 DirecTV stopped having those meetings?

25 A. No.

1 Q. Did it just one day --

2 A. Stopped coming, yeah.

3 Q. They just stopped coming?

4 A. Yeah.

5 Q. No warning or anything?

6 A. No.

7 MR. LAKE: I'll have you take a look at a
8 document to be marked as Exhibit 17.

9 (Marked for identification Exhibit 17.)

10 Q. Is this the kind of training that you were
11 previously describing?

12 A. Possibly. I didn't attend. I wasn't at
13 all of those meetings, but this possibly could be a
14 topic that was discussed along with the video of the
15 month.

16 Q. Do you recall whether DirectTV would be --
17 would give out handouts to the installers about the
18 topics to be discussed?

19 A. No. I don't recall.

20 MR. KELLY: Is there some reason this
21 document wasn't produced, counsel?

22 MR. LAKE: Again, we can talk about this at
23 a later date, but --

24 MR. KELLY: But you find it appropriate to
25 continue the deposition on a case where we have

1 discovery responses that say we're not -- refusing to
2 produce any documents not privileged. I don't see you
3 obviously claiming that this document or any of the
4 others that you used today that were not produced were
5 privileged. Do you think that's proper?

6 MR. LAKE: Well, again, I'm not going to
7 sit here and answer questions in a deposition that I'm
8 taking.

9 MR. KELLY: I'm not asking a question. I'm
10 asking why you think it's appropriate to sandbag
11 parties in a deposition when there have been discovery
12 requests that were served, discovery requests that
13 were responded to. You have the temerity to file a
14 motion with respect to things that we haven't
15 produced, but yet you think it's perfectly proper to
16 notice a deposition and examine a witness about a
17 document that was requested and not provided.

18 MR. LAKE: That sounds like a question. So
19 I don't actually have any response for it at this
20 time.

21 MR. KELLY: I wouldn't think so.

22 MR. LAKE: We can move on.

23 Q. Mr. Martinez, have you seen any handouts
24 like Exhibit 17 before?

25 A. I can't remember.

1 Q. And it's your testimony that DirecTV no
2 longer gives any kind of weekly -- or, excuse me,
3 monthly trainings?

4 A. Yes.

5 Q. At any time did DirecTV give weekly
6 trainings?

7 A. No.

8 MR. LAKE: If you could turn back to the
9 contract that we've been discussing. If you could
10 just -- we can go off the record. I just need a
11 minute to find the exact spot. I didn't write it
12 down.

13 (Off the record)

14 Q. If you could look to page 3, the very last
15 sentence at the bottom of the page. "During the term
16 of this agreement, as well as any extension thereof,
17 contractor shall make its offices available at any
18 time during business hours so that DirecTV may inspect
19 and otherwise audit the way in which contractor is
20 performing the services, both at contractor's offices
21 or warehouses, and on customer's premises, as well as
22 to inspect the manner in which DirecTV system hardware
23 is being secured." Do you see that sentence?

24 A. Yes.

25 Q. Has AIS been inspected or audited at any

1 time by DirecTV?

2 A. No.

3 Q. When you were at Lumin, was Lumin ever,
4 while you were there, audited or inspected by DirecTV?

5 A. No.

6 Q. Are you aware if, before you started at
7 Lumin, they were ever audited or inspected?

8 A. No, I'm not.

9 Q. Does AIS give any ongoing training to its
10 installers?

11 A. Isolated up training when service numbers
12 dictate a technician is having an issue with a
13 specific process.

14 Q. What about when DirecTV issues a new
15 product or something like that? Would AIS hold the
16 training?

17 A. Yes.

18 Q. Would DirecTV personnel attend these
19 trainings?

20 A. No.

21 Q. Not to explain their product or anything
22 like that?

23 A. No. It's on-line video-based. So we have
24 technicians watch the videos of the new products.

25 Q. The materials that AIS installers would use

1 to complete their work, did DirecTV provide any
2 requirements about what sort of materials AIS
3 installers needed?

4 A. It had to be on the approved parts list.

5 Q. So DirecTV would provide such a list?

6 A. Yes.

7 Q. What kind of items are we talking about on
8 this list?

9 A. Anything from cable to fittings to the
10 types of attachment devices you use to attach to the
11 homes.

12 Q. How specific is this list, as far as what
13 kind of cables, for example, you need to have?

14 A. Specific.

15 Q. How long the cable has to be or how --

16 A. What type. Solid copper. Not allowed to
17 use copper clad cable. But, yeah, the approved parts
18 list is specific on exactly what parts are allowed to
19 be used on a DirecTV install.

20 Q. And is that approved parts list part of the
21 contract that AIS signed with DirecTV?

22 A. I don't know if it's part of the contract.
23 It's just the nature of the business, I guess.

24 Q. Is it something that DirecTV provides or
25 updates on an ongoing basis?

1 A. If they do, I don't know about it.

2 Q. Well, like, for example, when was the last
3 time you received an approved parts list?

4 A. It's been a long time. I can't remember.
5 I mean, things have not changed as far as the items
6 used to do the install.

7 Q. If you can turn back to the interrogatory
8 responses that have been previously marked as Exhibit
9 4. If you could turn to page 11. The last bullet
10 point in AIS's response states that if a technician
11 bills the wrong amounts, i.e., they say four receivers
12 were installed but actually five were installed, AIS
13 will adjust the payment to the technicians to reflect
14 the work that was actually completed. Do you see
15 that?

16 A. Yes.

17 Q. How does AIS verify the actual work
18 completed by the installers as opposed to what they
19 put on their billing sheet?

20 A. We get a -- what's called a comp sheet, and
21 it shows us all closed work order for a specific time
22 frame, and it shows exactly what was installed on a
23 closed work order.

24 Q. And who -- do you get that from DirecTV?

25 A. Yes.

1 Q. Will it be listed by day as far as what
2 work was completed on that day?

3 A. Yes.

4 Q. Will it list by installer as far as what
5 work was completed by an installer?

6 A. I believe so. I haven't looked at it in a
7 while, but I believe so.

8 Q. What was the name of that document?

9 A. Comp sheet. It's a -- it comes with a --
10 our weekly deposit.

11 Q. If you could turn to page 29 of the
12 document. It's one of the last pages. Here AIS lists
13 its current supervisors as Matt Henderson, Ryan
14 Caldara, Justin Masencup and yourself, Ray Martinez.
15 Earlier you testified that the current supervisors, as
16 of today, are?

17 A. Dennis Edson and Ryan Caldara.

18 Q. When was Mr. Edson hired as a supervisor?

19 A. He's had a number of titles with my
20 company. Before he was a supervisor he was a trainer.
21 I can give you an exact date on when the transition
22 was when we made him supervisor from trainer.

23 Q. What were his duties as trainer?

24 A. He would train the new hires on how to
25 install DirecTV's product.

1 Q. And there was enough new hires coming in to
2 make that training a full-time job?

3 A. Not really. That's why we made him a
4 supervisor.

5 Q. Matt Henderson is no longer with AIS?

6 A. No.

7 Q. What was the -- when did he depart,
8 approximately?

9 A. Matt hasn't been with us -- it's not been a
10 year yet. Within a year.

11 Q. Why did Mr. Henderson leave? Was he
12 terminated?

13 A. He was terminated by me.

14 Q. Was this based on anything to do with the
15 performance of his installers?

16 A. No. Performance by him.

17 Q. Can you elaborate?

18 A. He liked to go home a little earlier
19 sometimes and lie to me about it. That was one of the
20 main reasons.

21 Q. Mr. Masencup, Justin Masencup, he's no
22 longer with AIS?

23 A. No. He's still a part of the company, but
24 he's -- whereas he was an operations manager before,
25 now he more has an analyst role. He's a part-time

1 employee. Lives in California and he works for me
2 remotely.

3 Q. What are his duties as an analyst?

4 A. The metric reporting that we get from
5 DirecTV, he compiles all the data and creates nice
6 flashy reports that are easy on the eyes for our
7 technicians and myself. He manages all of our
8 computer systems. He's kind of analyst/IT guy. So
9 he's updating our systems remotely. He has access to
10 all of our computers. He assists with inventory. A
11 lot of number crunching. A lot of, quote-unquote,
12 analyst-type duties.

13 Q. You can set aside that document for right
14 now. Earlier we looked at a -- or we had as an
15 exhibit the responses of AIS to the Secretary of
16 Labor's requests for admissions. If you could find
17 that, I just don't remember the exhibit number.
18 Exhibit 8, yes.

19 And if you could turn to page 9. The
20 underlined sentence from AIS states: "Some of our
21 technicians did use hand-held devices that were
22 provided to us by DirecTV. Our technicians were given
23 the option of doing so. As of December 2013, none of
24 our technicians use them any longer."

25 What are these handsets that are described

1 here?

2 A. They were offered to us in a limited
3 quantity. Basically a hand-held device had the
4 ability to scan receivers, activate receivers, and it
5 gives the technician the ability to put themselves on
6 and off site.

7 Q. But now the technicians instead use their
8 smart phones?

9 A. Yeah.

10 Q. The hand-held devices, who were they
11 provided by?

12 A. DirecTV.

13 Q. Did AIS have to pay anything for these
14 devices?

15 A. No. We didn't buy them.

16 Q. Did the installers have to pay anything?

17 A. The installers paid a portion of the
18 monthly cellular cost because they were using them as
19 cell phones also.

20 Q. Do you know why installers are no longer
21 using this hand-held device?

22 A. We decided to just go completely away from
23 them. We told DirecTV if they -- I either wanted them
24 all or none. So I just didn't want to use them any
25 more.

1 Q. There were never enough hand-held devices
2 available for all the installers?

3 A. No.

4 MR. LAKE: Mr. Martinez, I'll have you take
5 a look at Exhibit 18.

6 (Marked for identification Exhibit 18.)

7 Q. These are the initial disclosures provided
8 in this litigation by AIS and yourself. If you could
9 turn to the third page. Actually, let me back up. On
10 page 2, AIS states that "The defendants disclose the
11 following categories of documents that may be used to
12 support its defenses." And No. 10, on page 3, is
13 mileage logs obtained from technicians in the course
14 of discovery. Do you see that?

15 A. Yes.

16 Q. Do you know what that's referring to?

17 A. No.

18 Q. Have you seen any mileage logs?

19 A. No.

20 Q. Have you requested that any installers keep
21 mileage logs?

22 A. I advise that they do, but I don't manage
23 it for them.

24 Q. Why did you advise them to?

25 A. They're using their own vehicles, so they

1 should, at the end of the year, claim those miles
2 because they're using it for work.

3 Q. Has AIS requested that the technicians
4 provide a copy of any of these mileage logs?

5 A. No.

6 Q. So do you know why any such mileage logs
7 would be used by AIS in this litigation?

8 A. No.

9 Q. And when did you first -- how did you first
10 learn that the Department of Labor was investigating
11 AIS?

12 A. That Amy Ward visit.

13 Q. What did you learn were the reasons for the
14 investigation?

15 A. She didn't give us any. She didn't tell us
16 what prompted her to be there or why. She told us why
17 she was there, what she was there to do and to make
18 sure, but she didn't tell us what prompted her to be
19 there.

20 Q. And have you spoken, at any time, to any
21 installers or former installers about the Department
22 of Labor's investigation?

23 A. No.

24 Q. Have you spoken to, besides your attorney,
25 have you spoken to anyone else about the Department of

1 Labor investigation?

2 A. My fiancée.

3 Q. Okay. And anyone else at AIS?

4 A. My supervisors know about something going
5 on. Obviously, the technicians have been interviewed.
6 And, you know, people get together, a little
7 scuttlebutt, whatnot, but I personally have not gone
8 over any of those things with those guys.

9 Q. And what have the supervisors told you
10 about what they've heard?

11 A. They've heard that the technicians have
12 been getting calls from government agencies asking
13 them questions. Wondering what's going on. But I've
14 never addressed it personally with the technicians.

15 Q. And what have you said to the supervisors
16 about the investigation or about the technicians
17 getting calls?

18 A. That it's a -- that we're currently under
19 an investigation with the Department of Labor, and
20 they're making sure that we're in compliance with
21 certain regulations.

22 Q. Have you expressed any negative feelings or
23 any kind of displeasure about the Department's
24 investigation to either supervisors or other AIS
25 personnel?

1 A. No.

2 MR. LAKE: We can go off the record. Take
3 a brief break for a few minutes. I just want to look
4 over anything. I think I might be almost done.

5 (Off the record from 2:45 to 2:54 p.m.)

6 MR. LAKE: Back on the record. Mr.
7 Martinez, I'm going to present you a document which
8 will be marked as Exhibit 19 in this case.

9 Q. These are the requests for admission/
10 amended responses of AIS. And specifically, if you
11 could look to page 5, the response to request for
12 admission No. 1. At line 19, AIS states that it
13 denies the requests for admission as the employees,
14 for the majority of the year, averaged eight hours or
15 less per day. Do you see that?

16 A. Yes.

17 Q. Do you agree with that statement?

18 A. Yes, I do.

19 Q. You believe that the installers generally
20 worked eight hours or less per day for most of the
21 year?

22 A. I believe that's what they average, yes.

23 Q. During the busy time, or the busier times,
24 how many hours per day do you believe the installers
25 were averaging?

1 A. Some technicians are better than others.
2 Some technicians -- it's funny. I'm sure we'll be
3 able to show specifics later. You can have a
4 technician work a six-hour work week and still not hit
5 40 hours.

6 MR. KELLY: Excuse me. Can you read that
7 back, please.

8 (Record read as requested.)

9 THE WITNESS: I meant a six-day work week.

10 A. But yes, you can -- of course working a
11 six-day work week, you do have technicians that
12 definitely work over 40 hours, but it's my belief
13 that, on the average, annually they don't average 40
14 hours a week.

15 Q. Even when they're working six days per
16 week?

17 A. Yes.

18 Q. And your testimony earlier was that last
19 year, approximately six months of the year, the
20 installers were working six days per week?

21 A. Yes. I think it's six months. Five or
22 six, give or take a month.

23 Q. Right. And nevertheless, installers were
24 not working an average of 40 hours per week?

25 A. Annually.

1 Q. Annually?

2 A. I don't think so. And I think, you know,
3 with some of the models I've been working on with Lisa
4 we can show it.

5 Q. What do you mean "models"?

6 MR. KELLY: Objection. Attorney-client
7 work product. All kinds of things. You're not
8 supposed to be talking about what you did with
9 lawyers.

10 MR. LAKE: I don't believe there's an
11 attorney with Lisa involved in this case, as I
12 understand it.

13 MR. KELLY: I'll let counsel handle that.

14 MS. TRUONG: It was done at the request of
15 counsel.

16 MR. LAKE: So as an attorney are you
17 instructing him not to answer?

18 MS. TRUONG: Yes.

19 Q. When the installers are working the four to
20 eight shift during the summer, are they -- do you
21 believe that they're still not averaging 40 hours per
22 week?

23 A. In the -- that short time frame, probably.

24 Q. Okay. But you believe that the rest of the
25 year they're working enough under 40 hours that the

1 annual average is less than 40?

2 A. Forty or less.

3 Q. Does AIS have any policies or any
4 intentions of how many hours a week that they want
5 installers to work?

6 A. No.

7 Q. How many hours installers are expected to
8 work?

9 A. No. We don't restrict the hours.

10 Q. In either way, there's no minimum or
11 maximum?

12 A. No.

13 Q. Does AIS take any steps to ensure that --
14 or to minimize the amount of overtime worked?

15 A. No. No.

16 Q. You had testified earlier about some
17 on-line videos for new DirecTV products?

18 A. Yes.

19 Q. Who produces those videos?

20 A. I believe they're on DirecTV's training
21 websites.

22 Q. Does DirecTV have access to AIS facilities?

23 A. You mean our offices?

24 Q. Yes.

25 A. They can visit if they want.

1 Q. When they -- when they're doing their
2 inventory checks that you're describing?

3 A. Yes.

4 Q. If they have -- -- excuse me, because I
5 don't recall. Were there other reasons that DirecTV
6 personnel would regularly come to AIS's office?

7 A. No.

8 Q. So when they come in for the inventory, do
9 they have to come in at the -- do they have access to
10 the offices without anyone from AIS being there?

11 A. No.

12 Q. No one has a key?

13 A. No.

14 Q. And you've testified about multiple agency
15 audits of AIS. We talked about, of course, the U.S.
16 Department of Labor's audit, the prior audits of Lumin
17 by the state of Washington. Are there other agency
18 audits that have happened?

19 A. I believe Labor & Industries did an audit a
20 while back. A safety.

21 Q. Do you recall the Labor and Industry audit,
22 what the allegations were?

23 A. We didn't have emergency exit evacuation
24 signs on the walls.

25 Q. Is that the safety audit?

1 A. Yes.

2 Q. And what about the Labor and Industry
3 audit?

4 A. I don't know exactly what that was about.

5 Q. Do you recall what the resolution was?

6 A. No.

7 Q. Whether AIS or Lumin had to pay any back
8 wages or anything like that to an employee?

9 A. No.

10 Q. Do you recall approximately how many years
11 ago that was?

12 A. No.

13 Q. You also spoke earlier about the leadership
14 team, I believe, at AIS with -- is that leadership
15 team yourself and Lisa?

16 A. And the supervisors.

17 Q. Is there anyone else that you would
18 consider part of AIS's leadership?

19 A. No.

20 MR. LAKE: At this time, I have no further
21 questions for Mr. Martinez on behalf of AIS, but I do
22 reserve the right to request additional time, if
23 necessary, to ask additional deposition questions of
24 AIS. There's been documents that have been mentioned
25 today that were not provided, such as the contract

1 between AIS and DirecTV.

2 Mr. Martinez has testified that he's not
3 the person most knowledgeable on all the topics, so
4 the Department of Labor reserves its right, at a later
5 date, if necessary, to request additional deposition
6 time.

7 MR. KELLY: The document -- the contract
8 has been produced by DTV. It was discussed in Chris
9 King's deposition. If there's any other document you
10 think should be produced, take a second. It's 3:00.
11 We've got at least two hours left today. Some of us
12 have traveled great distances to be here, and he's
13 told you generally what his knowledge is. And he's
14 told you he's going to be speaking to (inaudible), I
15 believe, in less than 20 hours or so.

16 On behalf of DirecTV I'm not agreeing to
17 anything. If you think there's another document that
18 you don't have a copy of the contract, just pull your
19 notes from the deposition that was taken last week and
20 have the --

21 MR. LAKE: Well, Joel, the contract that we
22 were using last week was the same one that we've
23 marked today, which was between Lumin and DirecTV.
24 And Mr. Martinez has stated there was actually another
25 contract entered into between --

1 MR. KELLY: Call his office.

2 MR. LAKE: Let me finish.

3 MR KELLY: We can call his office and have
4 it faxed to you like we did last week. It would take
5 about 10 minutes.

6 MR. LAKE: Well, this is a contract that
7 should have been provided months ago that hasn't been
8 provided.

9 MR. KELLY: I would imagine --

10 MR. LAKE: I'm not going to commit in any
11 way to getting the document within 10 minutes,
12 reviewing it, and asking follow-up questions today.
13 I'm reserving the right to request additional time at
14 a later date. If you want to object at a later date
15 then we can have that fight. I don't think there's
16 any reason to do that right now. But for today, I
17 have no further questions for Mr. Martinez.

18 MR. KELLY: That's fine.

19 MS. TRUONG: Counsel doesn't have any
20 additional questions?

21 MR. KELLY: I don't have any questions.

22 MR. LAKE: I guess, on the record, we
23 should work out the review of the transcript as we did
24 last week with Mr. King. Obviously, Mr. Martinez will
25 have the opportunity to review the transcript. We

1 would ask that -- or the Department of Labor will take
2 custody of the original, but a certified copy will be
3 given to AIS. I assume AIS will order one, actually.

4 MS. TRUONG: Yes.

5 MR. LAKE: And then, I don't know about how
6 much time you think you're going to need to have Mr.
7 Martinez review the transcript.

8 MS. TRUONG: I think we would request at
9 least two weeks from the time that it's -- we receive
10 it. So I'm not sure how quickly we can get the
11 transcript.

12 THE COURT REPORTER: Two weeks.

13 MR. LAKE: So if today is the 13th, if you
14 would get it, approximately, at the end of -- why
15 don't we say from the date that you receive it Mr.
16 Martinez will review it, and will let us know about
17 any changes within 14 days of that date.

18 MS. TRUONG: That works.

19 (Marked for identification Exhibit 19.)

20 (Deposition concluded at 3:06 p.m.)

21

22

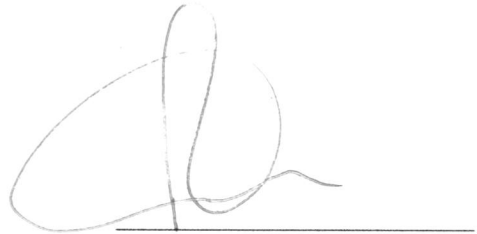
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DECLARATION

I declare under penalty of perjury that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the correction sheet hereof.



RAMON MARTINEZ

Dated this 31st day of July, 2014.

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010, authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the annexed and foregoing deposition consisting of Page 1 through 181 was taken stenographically before me and reduced to a typed format under my direction;

I further certify that according to CR 30(e) the witness was given the opportunity to examine, read and sign after the same was transcribed, unless indicated in the record that the review was waived;

I further certify that all objections made at the time of said examination to my qualifications or the manner of taking the deposition, or to the conduct of any party, have been noted by me upon said deposition;

I further certify that I am not a relative or employee of any such attorney or counsel, and that I am not financially interested in said action or the

1 outcome thereof;

2 I further certify that the witness before
3 examination was by me duly sworn to testify to the
4 truth, the whole truth and nothing but the truth;

5 I further certify that the deposition, as
6 transcribed, is a full, true and correct transcript of
7 the testimony, including questions and answers, and
8 all objections, motions, and exceptions of counsel
9 made and taken at the time of foregoing examination
10 and was prepared pursuant to Washington Administrative
11 Code 308-14-135, the transcript preparation format
12 guideline;

13 I further certify that I am sealing the
14 deposition in an envelope with the title of the above
15 cause and the name of the witness visible, and I am
16 delivering the same to the appropriate authority;

17

18 IN WITNESS WHEREOF, I have hereunto set my hand,
19 and affixed my official seal this 17th day of
20 June 2014.

21

22 _____
23 Certified Court Reporter No. 2498
24 in and for the State of
25 Washington, residing at Shoreline,
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184

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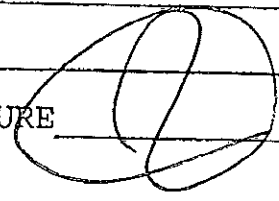
EXHIBIT U

ERRATA SHEET FOR THE DEPOSITION OF RAMON MARTINEZ
DATE TAKEN: JUNE 10, 2014
PAGE LINE CORRECTION

46 13 Strike "own"
10 16 Kelley
11 12 Kelley
11 23 Kelley

 All references to Ms. Lisa
 Kelley need to include an "e".

DEPONENT'S SIGNATURE



DATE 7/8/14